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Policy Review

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JOSHUA MURAVCHIK

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Against Natural Rights
ERNEST VAN DEN HAAG

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Policy Review is published quarterly by The Heritage Foundation, 513 C St., N.E., Washington, D.C. 20002. Send address change to Business Manager, *Policy Review*. Subscription rates are $15 for one year, $28 for two years. Add $5 a year for foreign air-speeded delivery. Back issues are available for $2.

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Policy Review is available on microfilm from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106. The International Standard Serial Number for *Policy Review* is ISSN: 0146-5945. National distributor for newsstands and bookstores: B. DeBoer, 113 E. Centre Street—Rear, Nutley, New Jersey 07110 (201) 667-9300.

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Controversy

Is Homosexuality Normal?

Dear Sir:

Steven Goldberg's "Is Homosexuality Normal?" (*Policy Review*, Summer 1982) is closely reasoned and enlightening on many details, but the main thesis—homosexuality is not normal—depends on an odd definition of "normality," or, more precisely, of disease (abnormality, pathology). Professor Goldberg rightly rejects a statistical definition (after all redheads or cigar smokers are statistically abnormal but not abnormal in Professor Goldberg's clinical sense) and disclaims a moral definition: "normality" as conformity to accepted moral norms. Fair enough. Professor Goldberg wants to show that homosexuality is clinically (or at least factually) abnormal or pathological; he needs a nonstatistical, nonmoral definition. But what he provides won't do.

Professor Goldberg claims that homosexuality must be abnormal since it is caused by abnormal factors such as those described by psychoanalysts. But these factors merely explain (if they do) how or why a person becomes homosexual. By themselves they do not allow us to conclude that homosexuality is abnormal or normal. If homosexuality were caused by overemphatic parental warnings against the opposite sex, or, necrophilia by warnings against intercourse with living beings, this aetiology would not show either to be abnormal. It would explain only how they came to be, which is quite irrelevant to their "normality." The same goes if homosexuality were caused by specific brainwaves, premature birth, or falling on one's head.

Professor Goldberg also insists that homosexuals cannot claim to be normal by a definition of normality that makes necrophilia normal. Such a definition, he suggests, would be "unreasonable," "implausible," or "unpersuasive." Perhaps such a definition would be bad public relations, (necrophilia has a bad press) as Professor Goldberg implies, but that is scarcely a serious objection. Actually necrophilia is usually regarded as abnormal for any or all of these reasons (a) it is statistically rare, (b) it is morally repugnant. Professor Goldberg has debarred himself from using either of these criteria of normality. Which leaves him with (c) necrophilia is associated with accepted symptoms of accepted disease. I think this is true. But it leaves homosexuals free to use a definition which makes neither necrophilia *per se* nor homosexuality *per se* abnormal, although associated diseases are. And, homosexuals may claim that homosexuality, unlike necrophilia, is not necessarily associated with accepted diseases. (For necrophilia one may substitute any other behavior such as coprophilia). Thus I see no reason why a plausible definition of normality must make necrophilia abnormal, why it cannot define both homosexuality and necrophilia as normal—except for pathologies which are closely associated with either, but, in the case of homosexuality, have not been shown to be an invariable part of the picture.

Professor Goldberg finally observes that homosexuality is abnormal, because to engage habitually in negatively sanctioned sumptuary behavior exhibits endogenous compulsion. This seems likely. But it need not hold when there are no negative sanctions. Thus homosexuality would be abnormal only in the presence of strong social disapproval—not as Professor Goldberg suggests, independently of it. Further, if compulsiveness is abnormal (as Professor Goldberg and

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I agree), it does not follow that that which one does compulsively is abnormal —be it homosexual behavior or stamp collecting.

I am quite willing to concede that homosexuality, at least in our society, is usually a symptom of personality disorder, that most homosexuals are compulsive and unhappy and, despite bravado, would prefer to be heterosexual if they could. But this is beside Professor Goldberg's point, which is that homosexuality is not just usually, but necessarily and always pathological. Professor Goldberg's conclusion follows from his inadequate, indeed irrelevant definition of abnormality as that which is done compulsively, or produced by abnormal causes.

A disease (abnormality, pathology; "normality" here is the absence of it) does any of the following: 1) it shortens life over what it could be absent the disease, 2) it causes undesired pain or discomfort from within the body or personality, 3) it precludes functioning as one could, and would want to in the absence of the disease, and prevents otherwise available gratification. If we accept this definition (and I see no reasonable alternative except moral or statistical criteria, which do not amount to a medico-empirical definition), then homosexuality is abnormal if, and only if, those engaged in it do not function as they could and want to. In short they themselves must be unhappy because of their homosexuality. (It does not matter whether society or Steven Goldberg is unhappy about them.) Now, I think the great majority of homosexuals are less happy than heterosexuals, and, probably, than they could be, if they were heterosexual—regardless of social sanctions. But Professor Goldberg wanted to show that they *necessarily* are abnormal because of their homosexuality. He has not shown it. For despite the unhappiness of the great majority, some homosexuals are quite fulfilled and cannot be shown to function less well than they would, were they heterosexual. Whatever causes it, therefore, homosexuality can be quite "normal," although I would no more advise anyone who can avoid it to become a homosexual than I would advise him to become a Soviet citizen.

About policy, I see no reason for invoking penal sanctions. But I do not think either that "homosexuals suffer a social ostracism far greater than can conceivably be justified." Where has Professor Goldberg been? Is this a realistic description of the contemporary United States?

Homosexuals should be accepted or rejected as heterosexuals should be—as individuals. Sexual behavior by itself, even if it were "abnormal" (pathological) is certainly not ground for comprehensive acceptance or rejection. Still, people are entitled to like or dislike any practice and those practicing it. There is no moral imperative to like or approve homosexuality, however normal in the clinical sense. Cigar smoking may be normal but you don't have to like it.

When sexual practices are perceived as undesirable and may influence the community, or the young, the community is entitled to prevent the danger it perceives if it feels strongly (a) about the undesirability of the practices, (b) about its actual or potential influence, (c) if it is reasonably sure that the measures taken to prevent the dangers perceived do not produce more danger than they are likely to prevent. Thus I find nothing wrong with excluding proclaimed homosexuals from teaching posts in primary or secondary schools where, unavoidably, they are models. But I can see no objection to homosexual garbagemen or Congressmen. Their homosexuality is irrelevant to their tasks—unless there is specific evidence to the contrary (including their own proclamation).

Ernest van den Haag
New York City

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Dear Sir:

I voted for Ronald Reagan and will happily do so again. Nevertheless, I remain convinced that American conservative ideologues of Mr. Goldberg's stripe are true masochists. In their unquenchable hunger to demonstrate the infallibility of their hatreds, they alienate broad sections of society which otherwise tend to support them. What they despise with such tenacity is, in fact, their most lovingly cultivated legacy: the left, their mirror image, which not only shares but accelerates their persecution of the nonstandard norm. I do not construct here a Hegelian dialectic; I simply assert that most individuals vote in their perceived self-interest. Mr. Goldberg asserts homosexuals have no home at all, and if the matter is left to him, he may very well be correct.

I must confess I have recently completed Alexander Solzhenitsyn's trilogy, *The Gulag Archipelago*, and perhaps that is why I am so struck by Mr. Goldberg's essay. He is faultless in his progression of logical annihilation, much like Stalin's infamous Article 58: homosexuals *seem* to be pathological, therefore they *must* be pathological, therefore they *are* pathological. Like Soviet theoreticians, he ends up with a behavioral (i.e. environmental) argument in which there can be no abnormality!

Orthodoxy is a fine ideal. When restricted to the divine, it bears no obstruction—as an act of faith. When orthodoxy is imposed on human society, we are guilty until proved innocent. When the will of man is centered in the will of one, we get Hitler, Stalin, Khomeini. Hopefully, we do not get Mr. Goldberg. His argument is simple, expedient, efficient, validated only by his own normative system (one which appears on its own terms to be quite perverse). To whom does it apply?

Who *knows* what causes homosexuality, recorded since the dawn of man? Does a homosexual choose/decide to be such from a menu of possibilities, or does he/she accept a difficult reality, the better to merge (rather than deviate) with society? Who demands special recognition, affirmative action, glorification? *Not* the majority of homosexuals, but those who have been goaded by Mr. Goldberg, *et al.* Who threatens the institution of the family? *Not* homosexuals, the majority of whom suffer self-conscious solitude in the absence of family, who build family surrogates in defense from loneliness. Who threatens the innocent youth of this country? Perverts? Isolated cases, of all sexual dimensions. Intelligent readers must recognize the homosexual scapegoat simply cannot support the massive social shift toward divorce, abortion, and absence of marriage the United States has experienced since World War II. If anything, homosexuals want to *belong* to society, to their communities, and to their families, admittedly now without shame: we are the love that dare not speak its name, but now, as God will let us, we love. Is this abnormal?

I cite two other conservative contributions to this painful topic. Midge Decter wrote a carping piece in *Commentary* ("The Boys On The Beach," September 1980), which emphasizes the grotesque aspects of homosexual life. She, like Mr. Goldberg, erects a "reductio ad absurdum." Although apt in her observations of a particular "tyranny of the majority," in a particular place in time, she is otherwise angling for sensational condemnation.

Michael Novak, in Christian contrast (and this is not to gainsay the humanity of Jewish intellectuals), takes a larger view. In "Men Without Women: Meditations On The Half-Life Of The Homosexual" (*American Spectator*, October, 1978), Mr. Novak provides a sensible (I will not say "sensitive"), humane (I will not say "compassionate") treatment on the subject: to wit, we need not honor nor

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promote; we need not condemn nor persecute that which we little understand, but, perforce, must live with. What a pity Steven Goldberg missed it! Let us live in human society, each as we can, each as we must. I submit that our compelling national question from an individual perspective is not war and peace, not the economy, but, rather: "How do I look in this light?" I also submit that this question, with all its pathetic implications, transcends the homosexual.

James E. Perrizo
Detroit, Michigan

Dear Sir:

In his "Is Homosexuality Normal?", Steven Goldberg refers to the now notorious occasion on which a majority of the American Psychiatric Association, as he puts it, rejected "an assessment of homosexual behaviour as abnormal." Apparently a later poll found that "two-thirds of those polled"—presumably the same APA electorate—nevertheless "feel that homosexuality is a disorder." The seeming discrepancy between public stand and private convictions provokes a harsh comment: "They justify this in terms of humanitarianism. It used to be called lying."

No doubt those strong words can pass as fair comment about the APA, which is, especially after its long and all too understandable failure to distance itself from the KGB psychiatrists, not my favorite professional body. But someone more ready than they to seize the fundamental conceptual points might well want to develop what Professor Goldberg does no more than mention, "a theoretical distinction between two types of abnormality." For the normal may be contrasted: not only with the "statistically usual"; but also with two other opposites, which need to be firmly distinguished one from the other. These are: on the one hand, the diseased or defective; and, on the other, the sick or the ill.

What is normal in the first of these two quite different understandings is by no means always and necessarily disputatious: a matter for supposedly arbitrary or capricious value judgement. We may very well agree that this or that is a good or even a perfect specimen of such and such an organ or organism without so much as asking whether perfect specimens of whatever it may be ought to be prized, multiplied, or otherwise encouraged. But a person who is sick or ill either is or is going to be in pain and/or in some other way incapacitated. Thus when sickness or illness is diagnosed, this is a problem for society precisely and only because it is a problem for the reasonably complaining patient. It is sickness and illness, rather than any possible disease involving no human suffering and no unwelcome incapacitation, that we want both our physical and our mental doctors to cure.

If only they had developed and defended this basic distinction, the members of the American Psychiatric Association could with a good conscience have continued to cherish the Goldberg conviction that there is indeed something abnormal rather than healthy about the homosexual; while at last—and none too soon—repudiating their most un-Hippocratic practice of attempting to "cure" the complaints of "patients" who are not themselves complaining.

Antony Flew
Professor of Philosophy
University of Reading

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Dear Sir:

Professor Steven Goldberg concedes in "Is Homosexuality Normal?" that "if homosexuality [were] the result of an interplay of physiological and environmental factors that can reasonably be seen as normal" it would be correct to say that homosexuality was normal. That concession, however, reveals one of the principal logical flaws that underlies his argument. For insofar as it is logically impossible to prove that such "normal" factors are not at play, it is *ipso facto* impossible to claim that homosexuality is not normal. (Apologies for the inevitable double negations.) In a footnote, Professor Goldberg indicates that "whether or not homosexual behavior so generated is *moral* is, of course, a philosophical and sociological question that is irrelevant here." But is that not, really, the most relevant aspect of deciding whether or not homosexuality is worthy of "social affirmation"?

Indeed, the aetiology of behavior and worthiness of social affirmation are altogether distinct. An action which can be fully explained physiologically can be highly immoral (e.g., murder under the influence of a drug, or caused by cerebral irregularities), while social affirmation may well be deserved by a Tchaikovsky or a Plato.

But what is especially disturbing about Professor Goldberg's discussion is its rather sinister similarity to arguments found in official Soviet psychology, which are used to suppress all kinds of dissent as abnormal because of social disapproval. The fact that such disapproval cannot be measured reliably in a totalitarian society is not the issue; for suppose majorities really did ostracize the Solzhenitsyns of this world (Plato, for one, had no illusions on that score). Surely it is possible to disapprove of homosexuality—a right to which Professor Goldberg is perfectly entitled—on different grounds, without threatening idiosyncratic behavior that might be not only moral but even highly desirable. And surely one can oppose affirmative action for gays while recognizing the right of individuals to engage in acts that are perfectly private.

Juliana Geran Pilon
The Heritage Foundation

Steven Goldberg replies:

Perhaps it's a lack of clarity on my part. More likely, it's that our expectations have become calcified by a decade of analyses which seem always to argue that homosexuality is normal, *per se*. Whichever, I must admit that a number of readers have assumed that I argue that homosexuality is *necessarily* abnormal, and Professor van den Haag has based his criticism on this incorrect assumption. This despite the fact that I wrote that:

1. Homosexuality that is completely determined by hereditary factors or normal environmental factors is normal.
2. Homosexuality that is caused by environmental factors that are merely different, but in no way pathology-inducing (as are the familial causes posited by the Freudians), should be considered normal.
3. When "homosexuality is the result of an interplay of physiological and environmental factors that can reasonably be seen as normal," then that homosexuality is normal.
4. Homosexuality may well be the effect of a number of distinct causal sequences, some of which are normal; some, abnormal.

Thus, to the extent that Professor van den Haag argues that I see homosexu-

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ality as necessarily abnormal (abnormal *per se*), he misreads my argument. This is clear when he correctly states my reason for calling necrophilia abnormal, but then states that I argue that it *necessarily* is.

As I tried to make clear in the essay, I emphasized necrophilia in order to demonstrate that any argument denying the validity of the *concept* of normality on *logical* grounds must also deny the validity of terming any necrophilia abnormal. Granted, anyone willing to deny the validity of terming any necrophilia abnormal can therefore ignore all that I write. But it is clear that none of those whose work I address are willing to argue that "homosexuality is normal, just like necrophilia." Clearly the homosexual spokesman wishes us to see homosexuality as normal and yet necrophilia as abnormal. To do this, he must surrender any attempt to deny the validity of the concept of normality *per se*.

Professor van den Haag and I agree on the abnormality of compulsiveness, but I do not see compulsiveness as *necessary* for a determination of abnormality. I don't know if there is uncompulsive necrophilia. But if there is, it is in all likelihood abnormal. I don't know if there is uncompulsive homosexuality, but if there is, it may or may not be abnormal, depending on the case. (To argue that either of these is *necessarily* compulsive is to be trapped in tautology.)

It follows that I disagree with Professor van den Haag that "homosexuality would be abnormal only in the presence of strong social disapproval." Socially approved homosexuality is normal in those whose homosexual behavior can be explained in terms of the positive sanction. However, it is abnormal in those who would so behave even if the behavior were disapproved (when the cause of the behavior is abnormal by the criteria I discuss).

Likewise, Professor van den Haag's claim that an individual must be unhappy with his behavior if that behavior is to be considered abnormal renders his definition incongruent with any definition of normality used by anyone. Clearly the necrophilia-loving coprophiliac's behavior (while not *necessarily* abnormal) is likely to be abnormal, however happy the individual might be. It is the obvious pathology of cause, and not our dislike of the behavior, that leads us to call the behavior abnormal. We dislike bank-robbing, but we do not call it abnormal.

Perhaps I should add here that examination of points of disagreement often make differences seem greater than they are. A yellow grapefruit and a pink grapefruit seem diametrically opposed when you discuss color, nearly identical if any other measure is used. Similarly, my position and that of Professor van den Haag are, in most respects, very close. We share a distaste for views of normality that require a Platonic ideal, moral assumptions, claims of evolutionary fitness, or a teleological view of nature. We agree (and so do most homosexuals when speaking off the record) that most homosexuals suffer from pathology that is a function of their development, not merely social sanction. We disagree on whether homosexuals are more ostracized than can be justified, but this is a question of what one sees as justified and is not amenable to empirical settlement.

What enrages Mr. Perrizo, however, is not my normative view (which is irrelevant to, and unstated in, my essay), but the fallaciousness of the argument I criticize in the essay. When his letter is relevant, it simply restates the fallacious argument.

The purpose of my essay was: (A) to articulate the meaning of the word "abnormal" as it is used in everyday life (even by homosexuals when they are not discussing homosexuality) and by psychologists; (B) to specify the criterion for abnormality that this meaning implies; and (C) to demonstrate that all current,

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self-contained causal theories of homosexuality would, by this criterion, find *most* homosexuality abnormal. The point is that any assessment of the normality of a behavior must be founded on a causal explanation of the behavior and its functions.

Mr. Perrizo does not wish to address this straightforward argument. He implies instead that I qualitatively equate homosexuality with necrophilia/coprophilia. Any objective reader of the essay finds that the stated and actual function of the invocation of necrophilia/coprophilia has nothing to do with degree of pathology. Necrophilia/coprophilia is invoked to make the logical point that the homosexual must do one of two things: If he denies the validity of the *concept* of normality, he must also deny the validity of terming even necrophilia/coprophilia "abnormal." Or if he wishes—as homosexual spokesmen invariably, and reasonably, do—to demonstrate that homosexuality is normal, but that necrophilia/coprophilia is abnormal he must present a distinction between homosexuality and necrophilia/coprophilia that makes it plausible to argue that the former is *incorrectly* labeled "abnormal" while the latter is *correctly* so labeled. This distinction cannot rest on the basis of an individual's happiness with his behavior, cross-societal frequency of the behavior, social condemnation, or the (possible) fact that the behavior hurts only the individual. For all of these things are true of necrophilia/coprophilia (which is why I invoked necrophilia/coprophilia).

What Mr. Perrizo must show, therefore, is that the term "abnormal" is *incorrectly* applied to homosexuality (as it was to left-handed behavior in the past). To do this he must demonstrate that current research is incorrect and that the causes and functions of homosexuality are not those posited by current research. By simply asserting away all such research, he fails to cast doubt on the abnormality of the behavior (as determined by the causes and functions of the behavior and an assessment of these in terms of the word "abnormal" as it is used). In other words, he gives us no reason to doubt the evidence and to consider that necrophilia/coprophilia is abnormal while homosexuality is normal (something he must do if his argument is to have any suasive force).

Dr. Pilon bases her criticism of my logic on a fallacy. It does not follow from my assertion that "homosexuality...(that results from causal factors that can be seen as normal)...should be seen as normal" that I must therefore show that " 'normal' factors are not at play." In other words, if *only* normal causes are at play, the behavior is normal. If the causation *includes* abnormal causes, however, then the behavior is abnormal. Neither designation requires demonstrating that " 'normal' factors are not at play."

More important, even if Dr. Pilon's point were well-taken, it would hold only if she were to make the same argument for necrophilia. (If she is willing to so deny the abnormality of necrophilia, my response is given in the essay and above.)

Dr. Pilon makes a similar 180-degree error in her discussion of the political implications of my definition of normality. I define normality as "altogether distinct" from "worthiness of social approval" precisely to avoid the possibility that political purposes (whether those of Dr. Pilon or the leadership of the Soviet Union) can be camouflaged by, or furthered by, a label of abnormality. Solzhenitsyn's behavior could not have been labeled "abnormal" by the criterion I describe. When one behaves in a way that is punished, we ask why. The answer may be that the behavior is normal (even heroic) or abnormal. The answer is a function of the cause of the behavior, not the mere fact of punishment or ostracism.

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Fair Play

Dear Sir:

Michael Levin's review of Stephen Gould's book in your Summer 1982 issue was a dirty job. Professor Levin's main technique is words like "posturing," "sarcastic," and "unscientific New Journalistic idiom." Usually it is hard to bring such a writer neatly to book. But Professor Levin oversteps. He says that Professor Gould's "honesty lapses" because he omitted words from an elliptical quote taken from an advertisement. I would say it was Professor Levin's honesty which may have lapsed, however. In Professor Gould's book, the full text of the advertisement is printed on the page facing the quote with ellipses, which is where Professor Levin himself surely saw it; a look at these pages makes clear that deception would be most unlikely. So where does honesty seem to lie?

Julian Simon
University of Illinois
at Urbana-Champaign

Michael Levin replies:

I am only half-penitent. While the enterprising reader is free to read the displayed ad, Professor Gould does knowingly delete a quite important caveat to enhance the impression of carelessness on the part of Terman and Yerkes. Other examples of Professor Gould's intention to mislead could be multiplied: his unattributed claim that hereditarians use IQ to rate the "worth" of individuals (p. 251, e.g.), his pretense that no experimenter has ever controlled for environmental influences on IQ (surely he knows of the extensive work done here), and, most egregiously in someone who is constantly stressing the "cultural context" of science, his failure to inform the reader that he is a Marxist who believes that scientific objectivity is impossible and that science is a tool for class oppression in the Marxian sense. Still, point taken. "Honesty" should perhaps have read "sense of scrupulous fair play."

Let me use this occasion to resolve a literary dispute that erupted in the pages of *Policy Review* #21. Dara Wier's "One Woman with the Lady Doctor" is not about masturbation. It is obviously about how a virgin can prepare herself manually for intercourse. Really, Mr. D'Souza, to suggest that this poem was in questionable taste!

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Misreporting Lebanon*

JOSHUA MURAVCHIK

Near the end of the siege of West Beirut, Secretary of State Shultz said: "The symbol of this war is a baby with its arms shot off." Israel and its supporters came to agree. The baby in question had appeared swathed in bandages in a UPI wirephoto captioned:

> Nurse feeds a seven-month-old baby who lost both arms and was severely burned late yesterday afternoon when an Israeli jet accidentally hit a Christian residential area in East Beirut during a raid on Palestinian positions to the west. The baby was being cared for in a hospital hallway, which is considered an area safer from shelling than the room normally assigned. (*Washington Post*, Aug. 2, 1982, p. A16)

Israel protested that a PLO shell, not an Israeli bomb, had caused the child's injuries. A few weeks later Israel produced photos and affidavits proving, even to UPI's satisfaction, that the child had not lost his arms and that his injuries were not very severe. The story seemed to symbolize the exaggeration that Israel felt permeated news reports about the casualties resulting from its attack on the PLO in Lebanon.

The photo also raised more questions than that, questions about balance and objectivity. If the baby was being held in a hallway, it was because the hospital had reason to fear that it would be hit by shelling from PLO-held West Beirut. But the press carried precious little reporting about PLO fire. Israel surely wielded the vast preponderance of force in Lebanon, but the shooting was not all in one direction. News reports had abounded with dramatic, gripping stories from West Beirut hospitals, but

*In order to evaluate the news coverage of the war and siege in Lebanon, *Policy Review* commissioned me to do a study. I have studied all the news reports about Lebanon appearing in the *Washington Post*, the *New York Times*, *Time*, *Newsweek*, and the three television networks from the time of the shooting of Israeli Ambassador Shlomo Argov in London until the evacuation of the PLO from West Beirut. (My study of the aforementioned print media went through the last official PLO departure on September 1. Because of the lag-time in receiving and viewing videotapes of the TV news, my study of them extends only through August 26 when the PLO departure was half completed.) I am indebted to James Pilkington, Jacklyn Freeman, and the rest of the able staff of the Vanderbilt Television News Archive and to Sylvia Gear of the Montgomery County Library for their kindnesses. Following, outlet-by-outlet, are my findings.—*J.M.*

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the UPI photo offered a rare, almost unique scene from an East Beirut hospital. It was ironic then that on this occasion, the news media focused not on the victims of PLO fire, of whom there were many, but on the one person taken to be a victim of Israeli bombs.

The New York Times

The *New York Times*, notwithstanding some notable lapses, maintained higher standards of journalistic objectivity than did any of the other news outlets covered in this study. In its editorials, the *Times* opposed the Israeli action in Lebanon, which it called an "excessive venture," arguing that Israel has "plunged deep into Lebanon, much deeper than [its] immediate security required." The views of *Times* editorials were reinforced by those in its columns. Guest columns divided two to one against Israeli policy, while all of the *Times'* own columnists who commented on events in Lebanon criticized Israel with the strong exception of William Safire. Anthony Lewis was far the most prolific of the *Times* columnists on the subject of Lebanon and the most vociferous. He held that Israel was driven by "delusions of empire" and was waging "a war to exterminate Palestinian nationalism." Taken as a whole, then, the editorial pages of the *Times* were weighted heavily against Israeli actions. This was not much different from the editorial content of the other major news outlets, but the *Times* distinguished itself by how little it allowed its news coverage to be skewed by its editorial opinions.

Much of the credit for that must go to the *Times'* two key bureau chiefs, David Shipler in Jerusalem and Thomas Friedman in Beirut. The prose of each was consistently free from hyperbole and tendentiousness, and the substance of their coverage exhibited a similar striving for objectivity.

The nature of events in Lebanon was such as to generate news stories that put Israel in a bad light. Israel—although not an aggressor in the proper meaning of that word—was on the offensive, was bringing to bear superior force of arms, and was exacting the greatest number of casualties. On the other hand, there were in Lebanon current "hand news" and feature material that did have the effect of putting Israel's actions in a better light, and these stories seem to have been captured by David Shipler more often than by any other reporter whose outlet is covered by this study.

Among these, two of Mr. Shipler's reports were especially important. On July 14, he reported on his efforts to sort fact from

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fancy in the furious controversy over civilian casualty statistics. In that report he stated plainly what many of his colleagues from other news organizations knew but only acknowledged indirectly, if at all: "It is clear to anyone who has traveled in southern Lebanon, as have many journalists and relief workers, that the original figures of 10,000 dead and 600,000 homeless, reported by correspondents quoting Beirut representatives of the International Committee of the Red Cross during the first week of the war, were extreme exaggerations." (July 14, p. 1) On July 25, the *Times* carried Mr. Shipler's lengthy feature story titled "Lebanese Tell of Anguish of Living Under the P.L.O." which pulled together in a way other news outlets failed to do, the story of the bullying, brutality, thievery, expropriation, and conscription to which the PLO had subjected the Lebanese population during the past seven years in the areas under PLO control. (p. 1)

There were numerous other stories by Mr. Shipler that were missed by most or all of the other media—for example, on how the transformation of the PLO's military capabilities from that of a guerrilla band to that of a conventional army entered into Israel's decision to move against the PLO; or the description of a school in Tyre where the basement shelter was used by the PLO to store arms while its playground served as an anti-aircraft gun position. (June 7, p. 1; June 17, p. 20)

Mr. Shipler's reporting, it should be added, was not "pro-Israeli." In debunking the exaggerated casualty figures, he also made short shrift of the figures that had been given out by the Israelis, saying that these "exclude a lot" and that they "severely understated the casualties." (July 14, p. 1) While reporting on the joy of many Lebanese at having the PLO driven from their areas, Mr. Shipler also reported on the misery and fear of many of the Palestinian civilians who were left behind. (July 3, p. 1) His harsh account of Israeli censorship was among the most devastating to appear in the American press, made all the more so by his own manifest reasonableness. (July 6, p. 1).

Mr. Shipler's reports were supplemented by such other interesting stories as James Markham's about life under the PLO in southern Lebanon, Henry Kamm's about the support for Israel in East Beirut, James Clarity's about the Israeli offer of medical treatment to injured Lebanese civilians, and James Feron's interview with an Israeli bomber pilot about civilian casualties and Israeli targeting. The total effect of this reporting by Mr. Shipler and his colleagues was to tell Israel's side of the war. This did not erase the

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vivid descriptions and pictures appearing in the *Times* as elsewhere of the casualties and suffering that the Israeli action had exacted, but it gave *Times* readers a more balanced picture of the events in Lebanon than could have been gotten from any other outlet surveyed in this study.

Friedman on Arafat

Just as Mr. Shipler in Jerusalem was able to convey the Israeli side while still criticizing the Israelis, so the *Times*' Thomas Friedman in Beirut was able to convey the PLO side while still criticizing the PLO. Mr. Friedman's writing clearly conveyed the impression that he viewed the PLO in a sympathetic light. In the first days of the war, Mr. Friedman wrote that "it is hard to believe that even [a military knockout blow by the Israelis] would eliminate the PLO and what it represents. For the organization is the armed expression of four million Palestinian refugees. It is organically linked to them...As long as just a seed of the P.L.O. remains after this invasion, it will sprout again in some form." (June 9, p. 18) This evaluation not only mirrors the PLO's own, it also borrows the PLO's count of Palestinian refugees, which is an exaggeration on the order of 300 percent.

A month later Mr. Friedman wrote a portrait of Yasser Arafat for the *Times* "Week in Review" section that had nary a critical word. Mr. Arafat was shown as deeply loved by his people, as enjoying "the respect and allegiance of a wide range of Palestinians," as "an observant Moslem" who "neither smokes nor drinks" and who now "often ends up working around the clock," and who "enjoys meeting with the press." Mr. Arafat also, according to Mr. Friedman, kept on his finger tips the "maze of peace proposals" of which even "many Lebanese have lost track." Americans reading Mr. Friedman's portrayal could not but yearn wistfully for a day when our ill-starred country might be blessed with such a leader.

But Mr. Friedman's sympathy for the PLO did not deter him from writing stories that contradicted the PLO line, or even that showed the PLO's share of culpability for the suffering of West Beirut. For example, on July 4 Mr. Friedman wrote that Israeli actions to tighten the Beirut siege "made it more difficult for Mr. Arafat to drag out the negotiations," which "have been held up by the Palestinians' refusal to put a formal set of proposals on the table...." (p. 1) And in the last days of the siege Mr. Friedman wrote:

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> the P.L.O. only firmly resolved to leave West Beirut in the last 12 days....
>
> What changed? What compelled the P.L.O. leadership to transform its [position]...? The answer is a complex of factors, all of which must be related to the tremendous intensification in the Israeli bombardments of P.L.O.-controlled West Beirut since Sunday, Aug. 1. Historians will judge whether that violence was in proportion to the task at hand, or justified given the heavy loss of civilian life, but there can be little doubt that it was the catalyst for Mr. Habib's agreement... (Aug. 11, p. 14)

Few readers of Mr. Friedman will doubt that his own judgment about the questions he bequeathed to the "historians" is that the Israeli actions were neither "in proportion" nor "justified," a judgment in which he would surely be joined by most of the rest of the Beirut press corps. But whereas the others seemed unwilling, in light of their opposition to Israeli actions, to attribute any positive effects to those actions, Mr. Friedman seemed to put more distance between his own opinions and his best reading of the facts.

While the *New York Times* coverage was better than that of many others, it was not without its flaws, and not all *Times* reporters matched the high standards set by Messrs. Shipler and Friedman.

Phantom Statistics

After a week of warfare, *New York Times* correspondent William Farrell gave this account of the confused reports on casualty figures: "Some say that as many as 10,000 civilians have perished in Lebanon. Others say the figure is higher. But no one really knows." (June 13, p. 15) The PLO was at the time trumpeting the figure 10,000, and no one was reported elsewhere in the major media as offering a higher figure, so the identity of Mr. Farrell's "others" is unclear. Israel's supporters were claiming that the figure 10,000 was many times too high and that was what the real debate was about, not, as Mr. Farrell implied, about whether the PLO's figure was too low. Nor was that the end of Mr. Farrell's penchant for playing fast and loose with war statistics. On June 30, Mr. Farrell wrote from Beirut that "the International Committee of the Red Cross here estimates that there are 600,000 people in Lebanon who qualify as refugees." This number, 600,000 homeless, had gotten wide coverage and had indeed originated with the ICRC, but it also had been repudiated by the ICRC on June 18, twelve days before Mr. Farrell's story. On June 25, five days be-

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fore Mr. Farrell's story, the *Washington Post* carried an interview with Francisco Noseda, the ICRC representative in Lebanon who had been responsible for the original figures. Mr. Noseda said that not 600,000 but 200,000 was the approximate number of homeless "at the time of the war," that is before the cease-fire, but that the number had dropped far below that since the fighting ended. (p. 27)

While he was careless in his own use of figures, Mr. Farrell was especially eager to catch the Israelis in the act of underestimating casualty figures. On July 11 he reported that he had interviewed the administrators of West Beirut hospitals in order to formulate a casualty tally that would repudiate figures that "an Israeli colonel" was alleged to have cited to "reporters at the United Nations" according to "a report widely circulated here [in Beirut]." Apparently the investigative zeal that drove Mr. Farrell from hospital to hospital in pursuit of casualty counts failed him when it came to the seemingly elementary tasks of checking to see whether the "widely circulated" report was accurate. The Israeli colonel was a medical officer who had served with Israeli forces in southern Lebanon. The figures he cited in his UN press conference—which must have been covered by the *New York Times*—were for "the south of Lebanon, excluding West Beirut." Thus Mr. Farrell's hospital count was of no relevance, a fact he should have been able to learn through a call to his home office had his eagerness for a story repudiating Israel not gotten the better of him.

If Mr. Farrell was sloppy in handling current facts, he did little better with historical ones. In explaining the background to the current crisis, Mr. Farrell wrote that "When Israel was created in 1948, many thousands of Palestinian Arabs fled." (June 18, p. 6) That these two events—the creation of Israel and the flight of the Palestinian Arabs—were connected to each other by a third event—the launching by the Arabs of a war of annihilation against the fledgling Israeli state—was apparently a triviality with which Mr. Farrell wished not to tax his readers.

Another *New York Times* reporter who was sometimes sloppy with facts was Marvine Howe. Writing about the problems of refugees she referred to some who had been made refugees "when the Israelis invaded Damur, a Palestinian settlement south of Beirut." (July 18, p. 10) Damur, of course, was a famous center of Lebanese Christendom until it was largely destroyed and seized by the PLO in the 1975–76 Lebanese civil war. Those of its residents who were not killed fled. To refer to Damur as Ms. Howe

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did is rather less defensible than it would be to refer to the West Bank as "an Israeli territory lying mostly to the east of Jerusalem," a reference that is hard to imagine ever appearing in the *Times*.

Early in the war, Ms. Howe's dispatches bore a Damascus dateline, but eventually she went to Lebanon whence she wrote a series of feature stories. On August 12 her story "Disillusionment Sprouts in Christian East Beirut" told of Christian Lebanon's growing "disenchantment" with the Israelis. (p. 6) On August 18 her story was "Lebanese in Occupied South Say Israelis Give Free Rein to Lawless Militias." (p. 6) The next day she wrote about attacks by Christian militias on Palestinian civilians in Southern Lebanon (Aug. 19, p. 4) The day after that she reported from northern Lebanon that "fears are growing here... that once the Beirut crisis is over, the Israelis will begin a drive against the Palestinians in the north...." (Aug. 20, p. 1) A week later she reported on charges of Israeli mistreatment of prisoners and the alarm of the Quaker Legal Aid office that the rights of suspected PLO prisoners were not adequately guaranteed. (Aug. 27, p. 6) All of these may have been legitimate stories, but in any war the number of interesting feature stories is virtually infinite, and Ms. Howe's reports gave the impression that she had travelled Lebanon looking for stories with an anti-Israel twist.

Henry Tanner of the *Times* offered during the Lebanon events an excellent example of the phenomenon of differential credulity. In Mr. Tanner's case he seemed to swallow like a babe what he was told by the Syrian government while treating with rigorous reporterly skepticism the utterances of the U.S. government. In a June 13 dispatch from Damascus, Mr. Tanner stated simply as fact that "the vital national interests of the Syrians, includ[e] continuation of the country's military and political presence in Lebanon...." (p. 12) Subsequent stories suggested that Mr. Tanner was here repeating a view expressed to him by Syrian officials. He might have also mentioned that Syria tends to regard Lebanon as a whole as rightfully a part of Syria, and it refuses to this day to grant Lebanon diplomatic recognition. American government officials must have wished that they had the charm of the Syrians when Mr. Tanner wrote a week later that "a deep bitterness against the United States was provoked by Jeane Kirkpatrick, the United Nations delegate, when she called a security council resolution 'unbalanced,' apparently because it failed to equate the attempted assassination of the Israeli Ambassador to London with

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the death of hundreds of civilians in bombing attacks on Lebanon before the June 6th invasion." The figure, "hundreds" of civilian deaths, exceeded even the PLO's, and his reference to the U.S. veto was disingenuous. Ambassador Kirkpatrick was referring to the entire pattern of PLO activities, not only the attack on Argov.

This was not the only instance in which the UN setting seemed to have a bad effect on *Times* reporters. When he spoke at the UN on June 18, Prime Minister Begin called the right of self-defense "the noblest concept of the human mind." This is a highly debatable formulation, but it was not sufficiently preposterous to suit the *Times*' Bernard Nossiter so he doctored Mr. Begin's quote to make it sound truly ridiculous and bloodthirsty. He reported, falsely, that Begin had called "*wars* of self-defense" (emphasis added) the noblest concept of mankind, a misattribution that was repeated by the *Times* the next day.

Despite the sharp slant of its editorial pages and the lapses of Mr. Farrell, Ms. Howe, Mr. Tanner, and others, the heart of the *Times'* coverage lay in the work of Messrs. Shipler and Friedman, and on the whole it was of a higher standard than that of other news outlets.

The Washington Post

The editorials of the *Washington Post* were more stridently critical of Israeli policy than were those of the *Times*. The *Post* said that "the Israelis have been unforgettably bloody" and that "the widespread slaughter of civilians has undermined Israel's claim to moral superiority." (June 25) Nonetheless, the wide variety of syndicated columns that fill the bulk of the *Post*'s editorial pages served to give these a somewhat less one-sided cast about events in Lebanon than had those of the *New York Times*. But while the *Times* managed most of the time to restrict its editorial opinions to its editorial pages, the *Post* read, throughout the war and siege in Lebanon, like a newspaper on a crusade. Editorial opinion flowed forth from a variety of sections and departments into a large stream that was uniformly anti-Israel and often polemical.

As if to clue its readers as to which opinions were in style, the *Post*'s "Style" section in this period ran four front page features on those campaigning against Israeli policy: The Arab-American Anti-Discrimination Committee, former Senator James Abourezk, Israeli left-winger Uri Avnery, and the Arab Women's Council. (June 28, p. C1; July 3, p. B1; July 17, p. C1, July 9, p. D1) The latter, formed by the wives of Arab diplomats, re-

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tained the public relations firm, Gray and Co., which put together a campaign of radio and newspaper ads featuring casualty and homeless statistics that had already been repudiated and retracted. The campaign was financed in part by Arab governments, as was made clear when Gray and Co. filed with the Justice Department under the foreign agents registration act, a fact which was not reported in the *Post*'s profile of the group. Considering what the PLO had done to Lebanon, and that it was the government of Jordan that had driven the PLO into Lebanon and the government of Saudi Arabia that financed its activities there, some *Post* readers may have found irony in the "Style" section's large photograph of the wives of the Jordanian and Saudi ambassadors under the headline "The Crusade for Lebanon." In the same period, the "Style" section also ran a feature on a banquet held by the American Lebanese League, a group identified with those elements in Lebanon allied with Israel. (June 12)

In the "Metro" section, *Post* readers found columns by Richard Cohen who seemed out to prove the same lesson that Anthony Lewis was proving to readers of the *New York Times*: You don't have to be gentile to be hyperbolically polemical against Israel. Mr. Cohen wrote that Israel "plays with language in the Soviet manner." (June 27, p. B1) When this provoked some Jews to write angry letters to Mr. Cohen, he complained that "with American Jews. . . dissent becomes treason." (July 6, p. C1)

The Sunday *Post*'s widely read and respected "Outlook" section "tries to be open to a wide range of views," says its managing editor, Noel Epstein. But during the three months of fighting and siege in Lebanon, the variety of views carried in "Outlook" were all anti-Israeli (except for the editorial and column pages, which on Sundays are placed in the "Outlook" section and which, as already noted, reflect the diverse opinions of letter writers and syndicated columnists). To call the "Outlook" essays merely anti-Israeli is to fail to capture their full flavor. A long panegyric to Yasser Arafat by novelist John LeCarré concluded with this reference to the Holocaust: "It is the most savage irony that Begin and his generals cannot see how close they are to inflicting upon another people the disgraceful criteria once inflicted upon themselves." (June 20, p. C5) It seems strange that Mr. LeCarré, who is not ordinarily at a loss for vivid descriptives—"the invasion [of Lebanon] was a monstrosity," he said—should have coined such an inexpressive term for the murder of six million Jews as that they had "suffered the infliction of 'criteria.'"

The PLO eagerly pushed the analogy of Israelis to Nazis, a

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propaganda formulation that it may have learned from its Soviet tutors who have long employed it. But should the *Washington Post* have opened its pages to such stuff? Actually, LeCarré's essay was written not for the *Post*, but for the *Boston Globe*. Apparently *Post* editors found it so valuable that they reprinted it.

Nor was this the only occasion on which this theme could be found in the "Outlook" section. Three weeks later, Granville Austin, a former State Department official, wrote that "Israel...is imposing its own policy of *lebensraum*" on the West Bank. (July 11, p. C4) "*Lebensraum*" was the slogan for Hitler's design for empire to his east, and it seems odd to have to recall that what Hitler did to the Poles, Balts, Russians, and Jews who were in his way was something considerably nastier than merely failing to satisfy their national aspirations or offering them too little autonomy as Mr. Begin is accused of doing to the Palestinians.

The Israel-Nazi analogy also found its way into another "Outlook" essay, written by William Claiborne, who was in the final weeks of his term as the *Post*'s Jerusalem bureau chief when the fighting in Lebanon began. Mr. Claiborne quoted an Israeli professor who likened " 'good Israelis' [who] keep quiet about injustices against the Palestinians" to " 'good Germans,'...[who] did not stand up to the incipient stages of the persecution of the Jews." (June 6, p. C4) Mr. Claiborne did not affirm this analogy in his own voice, but he said that it "struck a responsive chord" among "liberal-minded Israelis," and since the essay quite plainly used the journalistic device of reporting the views of "liberal-minded" Israelis to get across those of the author, the implication was that Mr. Claiborne was at least sympathetic to the Israel-Nazi analogy.

Another "Outlook" essay, this one by Milton Viorst about the "aggressive new culture" in Israel that has superseded "Zionism's idealistic dreams," stopped short of analogizing the Israelis to Nazis. It merely associated them with fascists. Mr. Viorst wrote that Mr. Begin's revisionist Zionist movement was described by its friends as emulating Europe's centrist democrats, while "its critics compare its doctrines to the autocracy of Pilsudsky in Poland and Mussolini in Italy." Mr. Viorst's conclusion was that "both [views] in some measure are right." (Aug. 1, p. B1)

Given this treatment, Israelis may have felt that they got off light when the *Post*'s assistant managing editor for foreign news, Jim Hoagland, merely analogized Mr. Begin to Ayatollah Khomeini in his "Outlook" essay of July 18. The Arab world, said Hoagland, was now confronted with "the twin challenges of Is-

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lamic and Jewish fundamentalism unleashed by...Khomeini and ...Begin." (July 18, p. 1) But if the analogy to the Ayatollah Khomeini was less offensive than the analogy to Hitler or Mussolini, it was still inaccurate and unfair. If Mr. Begin's policies toward the occupied territories are wrong, as Jim Hoagland believes, then Mr. Begin can be faulted as a rigid or uncompromising nationalist, but what does that have to do with Khomeini? Has Mr. Begin persecuted the practice of other religions in Israel as Khomeini has done in Iran? Do firing squads dispatch dissenters in Tel Aviv prisons? Mr. Begin, in fact, is the leader of one of Israel's nonreligious political parties. If there is anything that would qualify to be called by Mr. Hoagland's neologism "Jewish fundamentalism," it would be the beliefs of those ultra-orthodox Jews who, because they read the Talmud literally, refuse to recognize the state of Israel.

A third *Post* correspondent who expressed his opinion in "Outlook" was Jonathan C. Randal. He wrote that "West Beirutis consider the Israelis masters of terrorism" and made clear his endorsement of this opinion by stating, "I count myself as a resident of West Beirut." (July 18, p. B5) In the same essay, Mr. Randal made the startling assertion that "since the 1967 Arab-Israeli war, Israel ha[s] habituated the Arab world...to a rising level of violence in this region." Given not only the Yom Kippur war launched by Egypt and Syria, but also the Iran-Iraq war, Lybia's invasion of Chad and its many other regional adventures, the civil wars in the Sudan, Lebanon and Syria, the Iranian revolution, the Jordanian-Palestinian war, a variety of other civil wars, coups, and revolutions, his assertion bespeaks an extraordinary propensity to blame Israel for all ills.

A Test of Objectivity

Given the pivotal roles of Messrs. Randal, Claiborne, and Hoagland in the *Post*'s news coverage of Lebanon, the strong and mutually consistent opinions that the three revealed in their "Outlook" essays inevitably put to the test the *Post*'s reportorial objectivity. It was a test the *Post* failed.

Speaking as a panelist on ABC's "Viewpoint" show (Oct. 20), Jim Hoagland forcefully defended the *Post*'s handling of casualty and destruction statistics during the fighting in Lebanon. He said:

> The *Washington Post* consistently sought...to indicate that there were a range of casualty figures, that they were imprecise, that it was impossible for reporters...to go out and to

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verify the casualty totals, and we sought to make that point again and again.

While Mr. Hoagland no doubt was stating the *Post*'s goal, its record was not quite that clear. On the second day of Israeli bombardment of PLO targets in Beirut after the shooting of Shlomo Argov, both the *Times* and *Post* reported on page one the casualty statistics announced by the PLO, but only the *Post* chose to put the PLO's figure in its headlines: "130 Said to Die in New Israeli Raids on PLO" (June 6, p. 1) The word "said" made clear that the *Post* was not vouching for the PLO's figures, but at a time when the PLO was the most fertile source of battle statistics, *Post* readers must have been wondering what to make of those figures. By using them in the headline, the *Post* was signalling that the PLO numbers deserved at least to be taken seriously. When asked in an interview how seriously PLO numbers should be taken, Jim Hoagland responded that they should be treated with the same skepticism that reporters apply to the statements of every government. But if all governments deserve to have their statements treated with skepticism, not all governments are deserving of equal skepticism. Some governments, for one thing, are willing to have their statements scrutinized by a free press, while others try to control news. The PLO, which proclaims itself a "revolutionary" movement of "armed struggle" must feel more justified than many governments in treating information as a weapon. Throughout the siege of Beirut, for example, it was reported frequently and treated almost as natural by the press that the public position of the PLO was being contradicted by what it was saying in private to Lebanese negotiators. In the past the PLO, when reporting on its actions against Israel, routinely doctored the number of casualties among its own fighters, Israeli forces, and civilians on both sides; sometimes it even reported actions that had never occurred.

The *Post* was obligated to carry the PLO's claims, but there was ample reason for those claims to be treated very gingerly, reasons that were reconfirmed when PLO casualty figures for Lebanon proved to be vastly in error.

Despite Hoagland's assertion that the statements of all governments warrant journalistic skepticism, the *Post* had on the first day of bombing lent its own imprimatur to statistics issued by arms of the Lebanese government. These figures were carried by both the *Times* and *Post*. The *Times* had put them in a subhead that read,

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"45 Are Reportedly Killed." (June 5, p. 1) The *Post* put the figure in its headline, without a qualifier, "Israel Hits PLO Sites in Beirut, Killing 45." (June 5, p. 1)

It might be said, in extenuation of this headline, that the Lebanese government is more honest than most, but the problem with this and with a vast outpouring of subsequent information attributed to Lebanese state television, radio, and police sources was that the areas of fighting and bombardment were by definition PLO areas (with occasional exception), and in these areas the Lebanese government had no authority, no official presence. The effect of this was explained by the *New York Times* late in July: "The P.L.O. press agency...has now become a primary source of information both for Western reporters and for the Lebanese state radio and television." (July 26, p. A6) This was not reported in the *Post*.

This was not the only occasion on which the *Post*'s skepticism failed it. On June 16, David Ottaway reported for the second day in a row the figures issued by Lebanese police—9,583 dead and 16,608 wounded. He added that "figures seem guesses at best," but much of the rest of his article was given to a far from skeptical recitation of various "statistics" that proved to be considerably inflated. Mr. Ottaway wrote that "the magnitude of the crisis was driven home today when the Lebanese government made an urgent appeal to the United Nations for food rations and other relief supplies for 600,000 persons." The figure 600,000 had been used by the Red Cross and the PLO to estimate the number of homeless or "displaced." The Red Cross was soon to repudiate the figure, but Mr. Ottaway treated the Lebanese government's use of the figures as if this confirmed its validity. It seems more likely that the government itself merely borrowed the figures from the Red Cross. Later in the article, he offered town-by-town refugee counts "based on Red Cross, U.N., Palestinian and eyewitness accounts" that corresponded with the 600,000 figure, but that included, among other things, an estimate of refugees from Sidon that was roughly double the size of that city's population.

In the same article, Mr. Ottaway wrote:

> ...it is becoming increasingly clear that the Israeli invasion has caused wide human suffering among Lebanese and Palestinian civilians alike.
>
> Fahti Arafat, the president of the Palestinian Red Crescent...and brother of...Yasser Arafat, said in an interview

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> today that he believed the death toll was even higher than official estimates, saying roughly 15,000 persons were killed and another 10,000 wounded.

Far from treating Fahti Arafat's numbers with skepticism, the phrases with which Mr. Ottaway chose to precede them served to lend them credence.

Nor was the absence of skepticism the only way that the *Post* failed to live up to Hoagland's standard. While the *Post* did "indicate that there were a range of casualty figures" it did not always indicate the full range. On June 19, Jonathan Randal reported about Sidon, the scene of the greatest number of civilian casualties in the battles of southern Lebanon, that "estimates for deaths of Lebanese civilians alone vary between 1,000 according to [an officer of the Gendarmerie] to as many as 2,000 according to the Lebanese Red Cross." (June 19, p. A21) Six days later, David Ottaway reported much the same: "The estimates of the death toll in Sidon alone, provided by the Lebanese Red Cross, have ranged from 1,000 to 2,000 with 3,000 to 4,000 wounded." (June 25, p. 27) Neither of these reports mentioned a report from Sidon that had appeared in the *New York Times* two days before Mr. Randal's and eight days before Mr. Ottaway's that said:

> Mahmoud Khadra, a resident of Sidon who is director of civil defense for Southern Lebanon [and therefore directly involved in the search for bodies and survivors], estimated that 400 civilians were killed when Israeli forces smashed into this ancient Mediterranean port south of Beirut. (June 17, p. 21)

More Phantom Statistics

While on some occasions the *Post* omitted estimates on the lower end of the range of estimates, on others it included estimates that were inconceivably high. On June 18, Michael Berlin reported from the UN that the International Committee of the Red Cross estimated the number of civilians "affected" by the fighting as 100,000 to 300,000. The word "affected" was meant to encompass both those who were homeless as well as those who were not homeless, but in need of food or other relief. For those who had been carefully following reports from Lebanon, this story was a clear signal that the grim numbers game had gotten out of hand. For it was the ICRC that had been the source for the already widely repeated statistic that 600,000 were "homeless." The real story here was a reduction of perhaps 75 percent to 90 percent in

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the ICRC estimate. Rather than explain any of this, the *Post* merely reported the new ICRC figures and then added this: "The U.N. estimates the number at 600,000, while the Lebanese say that 1.5 million need relief help." While the UN estimation may well have been merely a repetition of the original ICRC number, the origin of the 1.5 million attributed to the Lebanese is unclear, but its absurdity should have been clear to the *Post* since it exceeds the entire population of all areas in which there had been military action.

The *Post*'s skepticism did not fully come into play until Israel undertook to counteract the mounting casualty claims. On June 23, Edward Cody reported the casualty figures released by the Israeli government. He went on to provide a detailed refutation of the Israeli numbers, something the *Post* had not done in reporting any other party's war statistics. On July 17 the Israeli government released an updated sheet of war statistics. This was reported on page one of the *Post* by David Ottaway, who wrote that the Israeli figures were "misleading and apparently doctored to support the government position." (July 18, p. 1) The bulk of Mr. Ottaway's thousand-plus word story was given to debunking the Israeli figures. He said sardonically, "For reasons that remain unclear, the [Israeli] Army decided the best way to counter the Lebanese figures was to issue a set of its own as questionable on its face as the P.L.O.'s." Yet in the previous six weeks the *Post* had often reported PLO figures without once having told its readers that they were "questionable on [their] face."

The imbalance in the *Post*'s handling of war statistics was reflective of the larger problem that affected its coverage of the events in Lebanon: the *Post* seemed to exhibit an underlying sympathy—although not uncritical—for the PLO and an underlying antipathy toward Israel or at least toward the Israel of Menachem Begin. This slant seemed to grow out of nothing more sinister than the *Post*'s analysis. In an editorial at the end of the siege of West Beirut, the *Post* called the issue of the fate of the Palestinians "the root cause of the Arab-Israeli dispute." (Aug. 22, p. C6) This view, which was echoed often in the *Post*, accords with an Arab view of the Middle East conflict. In the Israeli view, by contrast, the root cause of the conflict is the Arab refusal to accept the existence of Israel. The fate of the Palestinians has always been solvable, in the Israeli view, within the context of Arab-Israeli peace. Given the view that the fate of the Palestinians rather than the existence of Israel lies at the heart of the conflict, it is natural

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to look upon the PLO, the preeminent voice of Palestinian nationalism, with at least a degree of sympathy and to look upon Mr. Begin, that Israeli prime minister least yielding to the claims of Palestinian nationalism, unsympathetically.

The *Post*'s sympathies found expression in many ways. On July 7, the *Post*'s Edward Cody wrote a page one eulogy to Azmeh Seghaiyer, the Tyre region commander of Fatah. "I always thought of him as an honorable military officer," said Mr. Cody. But Azmeh Seghaiyer had probably never initiated a military action, even of a guerrilla nature, against Israeli forces. This honorable officer's offensives were always aimed at civilians such as in the infamous coastal road massacre in which Fatah raiders commandeered a civilian bus and machine gunned civilians while racing along a highway. Aware of this anomaly, Mr. Cody wrote that "you can admire a man even when he is part of deeds you cannot admire—the coastal raid for example, or Israeli Defense Minister Ariel Sharon's bombardment of civilian neighborhoods in Beirut." Whether Mr. Cody meant to imply that he counts himself an admirer of Mr. Sharon's is not clear, but the failure of Israelis to take a similarly detached view of the PLO, he concluded, was "sadly narrow [for] a people renowned for intellectual tradition."

Three days later the *Post* reprinted a news analysis from the *Guardian* which observed that Mr. Arafat's "speech to the United Nations in 1974...remains a masterpiece of statesmanship." (July 10, p. 20) That was the speech in which Mr. Arafat, displaying a handgun tucked in his belt, declared that "racism, whose chief form is Zionism [will] ineluctably perish" and warned that Israel faced only a choice between voluntarily dissolving itself or violent destruction at the hands of Mr. Arafat and his cohorts.

The *Post* correspondent whose writing is most manifestly sympathetic to the PLO is Jonathan Randal. He wrote on June 20 that traffic jams in downtown Beirut "are caused by the hundreds of thousands of Lebanese and Palestinians who have deserted their shanty towns, now pounded by Israeli guns, leaving the Palestinian fighters to defend their homes." (June 20, p. A26) This sentence is so at odds with the manifest facts that it raises questions not merely about Mr. Randal's objectivity but even about his honesty. As he knew, neither were the Israelis attacking, nor were the PLO defending, "homes." The Israelis were attacking the PLO and were hitting intentionally only those homes from which the PLO was firing. During the siege of West Beirut it was widely reported that many civilians refused to flee to safety

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precisely because they wished to defend their homes from being taken over and used by the PLO as military positions.

On July 21, Mr. Randal wrote:

> The PLO insists on the Palestinian people's right to a national homeland, although over the years it has dropped its original claim to Israel proper in favor of setting up an independent state on any land relinquished by Israel—meaning the West Bank and the Gaza Strip...(July 21, p. A17)

Although the PLO did in its 1974 Political Program express its willingness to establish a government on the West Bank, a change from its previous position, it expressly stated at the same time that this did not mean it was dropping its claim to Israel proper. On the contrary, it declared that it would "struggle against any proposal for a Palestinian entity the price of which is recognition, peace, secure frontiers, renunciation of national rights and the deprival of our people of their right to return and their right to self-determination on the soil of their homeland." [WAFA (Beirut), June 9, 1974, cited in Y. Harkabi, *The Palestinian Covenant and Its Meaning*, 2nd ed., Valentine, Mitchell (Totowa, New Jersey: 1981) Appendix E, pp. 147-8.] This has not changed, as witness the "moderate" Al Fatah's declaration at its 1980 Congress: "This struggle will not stop until the Zionist entity is liquidated and Palestine is liberated." (*Al-Liwa*, Beirut, June 2, 1980)

The Case of the Congressional Delegation

During the Beirut siege, Representative Pete McCloskey and a few other members of Congress emerged from a meeting with Yasser Arafat and announced that Arafat had signed his acceptance of UN Resolutions 242 and 338. After a day or two of intense publicity it became clear to all that Mr. Arafat's statement was at best ambiguous, sparking something of a backlash in world opinion against what seemed a publicity stunt inappropriate to the gravity of the moment. Mr. Randal rushed to exonerate Mr. Arafat. "Just when the P.L.O. seemed to be making progress towards its goal of achieving a diplomatic opening to Washington," wrote Mr. Randal, "a well-meaning but over-eager U.S. Congressional delegation appears to have dealt that goal a setback.... The Palestinian leader never encouraged his American visitors to think he was about to recognize Israel on the terms they outlined." (July 27, p. 10) That the Representatives were over-eager is surely true, but that Mr. Arafat was an innocent victim is exceedingly doubtful. Mr. Arafat stood next to Mr. McCloskey

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during the latter's press conference, and at one point clarified the text of the statement he had signed; if Mr. Arafat had wished to correct Mr. McCloskey's "misinterpretation," he could have done so on the spot and the story would have been stillborn. Moreover, a few nights later, one of the networks reported on its frustration at having been summoned to Beirut by the PLO to interview Mr. Arafat about a "new" development in the PLO's policy only to have the interview cancelled when Mr. Arafat learned of the availability of the Congressional interlocutors.

Mr. Randal was equally active in offering *Post* readers negative images of Israel. After a week of fighting, he wrote:

> The Israelis had worked hard and long to turn one segment of the Lebanese population after another, against the Palestinians. But far from abandoning the P.L.O., the guerrillas' increasingly restive Lebanese and Syrian allies have rallied round in opposition to the invader...
>
> ...Israel's allies among the Christian Maronite community have been embarrassed by the course of events....
>
> The Israelis are overextended, according to military specialists here. (June 12, pp. 20–21)

Mr. Randal's attribution to unnamed "military specialists" is characteristic of his writing as is the effort to blame Israel for the hostility of various Lebanese to the PLO. More important, these four sentences are wrong on five material points: it was the PLO's behavior that alienated the Lebanese; the Syrians fought little if at all for the PLO; the PLO's Lebanese allies asked it to leave; the Maronites, while they didn't always do what the Israelis would have wished, clearly welcomed the Israeli action and used it to their own advantage; and Israel, while it may have been "overextended" politically was, in a military sense, hardly extended at all.

Confusing the Negotiations

On June 24, the *Post* ran a page one account by Mr. Randal of the state of Mr. Habib's negotiations, a story that shaped perceptions of those talks for the next month. He reported that Israel rejected a plan that had been discussed by Lebanon's National Salvation Council and Ambassador Habib. So important was this development that the *Post* carried a partially redundant, second full story on it by Edward Cody. Mr. Cody's story did not identify the source of the plan, but Mr. Randal quoted National Salvation Council member, Walid Jumblatt, identifying the plan as "American." Neither report offered many details of the plan, but

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Mr. Randal again quoted Council Member Jumblatt that these "amount to total surrender" by the PLO. A reader of the *New York Times* would have learned, correctly, that the plan in question was not an "American" plan, but a PLO plan. As more information came out, it became clear that the plan did not call for "total surrender" by the PLO or even for PLO evacuation from Beirut. Rather it called for *Israeli* withdrawal from Beirut, followed by PLO "withdrawal" to the refugee camps of south Beirut, which had been its military bases until Israeli action impelled it to take refuge in Beirut proper. Then the plan called for negotiations between the PLO and *Lebanese* officials about the ultimate disposition of PLO forces. It was, in short, not an American plan for PLO evacuation, but a PLO plan to avoid evacuation.

Mr. Randal's misleading account cannot be attributed to its having been a late-breaking story. Fully a month later, he again misled his readers on the same point. Relying again on anonymous sources, Mr. Randal reported on July 29 that:

> On the diplomatic front, politicians and analysts appeared confused by Israeli Prime Minister Begin's assertion that Habib had promised to report back in 48 hours to say whether the Palestinians were 'unequivocally committed' to leaving Beirut.
>
> The analysts noted that P.L.O. Chairman Yasser Arafat agreed in principle almost a month ago in a signed document to quit Beirut and Lebanon. (July 29, p. 26)

This report, once again, made it appear that Israel was needlessly complicating the negotiations. But Mr. Habib and everyone else, save for Mr. Randal's alter-ego-like anonymous "analysts," understood that for more than a month the PLO had attached so many improbable conditions to its "agreement to leave" that there was much reason to wonder about its true intentions.

His array of anonymous sources—"analysts," "politicians," "diplomats," "military experts"—expanded on June 24 to include "American officials." Like their fellow anonymities, these American officials had information critical of Israel to convey, namely that "Israel has systematically sought to frustrate U.S. relations with moderate Arab regimes, such as Jordan and Saudi Arabia, and prefers to be confronted in the region by more radical regimes that cannot look to Washington for any support." (June 24, p. A30)

The falsehood of this charge is made clear not only by Israel's cooperation with Egypt, the one Arab country that has gone the

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farthest in building ties to Washington, but also by Israel's past actions to protect Jordan against threats from Syria and by the goal attributed critically to Israel by *Post* reporters of seeing a "right-wing" government established in Lebanon.

The writings of Jonathan Randal were not the only news columns in which *Post* readers could detect hostility to Israel. *Post* White House correspondent Lou Cannon wrote at the end of President Reagan's European trip that "the president will return home without a clear idea of what the United States should do to persuade Israel to respect international law." (June 11, p. 20) His choice of words was both gratuitous and tendentious. It was gratuitous because even if Israel's march into Lebanon violated international law, Israel has a better record than most countries in abiding by international law, and only acted in this instance in response to years of grim provocation. And it was tendentious because it is not at all clear, as Mr. Cannon's flat assertion would suggest, that Israel did violate international law, given that the PLO was engaged in an eighteen-year long war of annihilation against Israel and that the government of Lebanon had ceded sovereignty over southern Lebanon to the PLO from which to carry on that war.

Reporting from home about American Jewish opinion, the *Post* said, "Even some of Israel's most ardent supporters agree that the war has made them uncomfortable in a way they never were before." (July 18, p. 16) It then gave one example of such a person, Rabbi David Saperstein, whom it identified as the "Washington representative of the Union of American Hebrew Congregations." Far from being among Israel's most ardent supporters, Rabbi Saperstein has for almost a decade distinguished himself as one of those leftist Jewish activists who expressed more solidarity with the American new left than they ever did with the policies of the Israeli government even when the Labor Party ruled Israel.

'Cashiered' and 'Unstable'

The *Post*'s attitude toward Israel carried over to those Lebanese groups allied with Israel. While the *Times* referred to Major Haddad as a "*breakaway* Lebanese army major," (emphasis added) (June 7, p. 14) the *Post* almost invariably referred to him as "cashiered." It also called Major Haddad "pliable, if personally unstable," without offering a hint of evidence for either descriptive. (July 13, p. 14)

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In the conflict between Lebanese Christian forces and the Syrian occupiers of Lebanon, Jonathan Randal held the Christians solely to blame. The "Christian militia was a one-time ally whom the Syrians saved in 1976 only to have the Christians go over to Israel. . . ," he wrote. (July 24, p. A19) On another day, he wrote that "in both 1978 and 1981, the Christian militias deliberately provoked showdowns with the Syrians—who were not clever enough to avoid them—and then waited in vain for the much hoped for salvation to come from Israel." (June 9, p. A16) Not only is this a rather original interpretation of the Syrian-Christian clashes, but if this was the Christians' tactic in 1978, it failed at rather disastrous cost to themselves, which makes it hard to believe that they would have blithely repeated it three years later.

The *Post*'s slant was apparent not only in what it printed, but sometimes in what it didn't print. A reader of the *Times* would have seen stories about the misery of Lebanese who had to live under the PLO, and the happiness of many of them to be rid of that yoke, even at a fairly high price. But a *Post* reader would have learned of these realities largely through stories suggesting they were no longer true, such as William Branigan's article, "Wary Christians Hope Israelis Don't Wear Out Their Welcome" (June 26, p. A26) or Jonathan Randal's report (with the aid of the usual anonymous sources) that:

> The Israeli drive through Christian territory apparently caused some second thoughts among Christians who long had favored an Israeli invasion to deliver them from their common foes, the Syrians and Palestinians.
>
> "The Christians are beginning to understand," one diplomat remarked, "that they cannot use the Israelis and that the Israelis use other people." (June 16, p. 26)

Other items that appeared in the *Times* but not in the *Post* included reports on: the release of captured PLO documents showing something of the PLO's role in the international terror network, its ties with the Eastern bloc and its plans to harm northern Israeli towns; Israel's offer of medical care to all civilians injured in the siege of Beirut; the conscription by the PLO of boys as young as twelve years old, many of whom were captured, then released, by Israel; and the refusal of moderate Lebanese Prime Minister Shafiq Wazzan to talk directly to Israeli officials in Beirut at a time when Israeli and U.S. refusal to talk directly to the PLO was widely reported to be interfering with the success of Ambassador Habib's negotiations.

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Both sides in the war between Israel and the PLO engaged in "public relations" activities, but often when the Israelis had a story to put out, *Post* reporters turned it against them. When Israel invited the press to see a captured school run by the United Nations Relief and Works Agency that appeared to have been used as a training camp for terrorists, the *Post* played the story not as a scandal but as "the latest in a series of confrontations between Israeli authorities and the UN agency," and gave as much space to UNRWA denials as to the Israeli allegations. (June 30, p. 15) (When four months later the UN admitted the truth of the Israeli charges, the story made page one of the *Times* but went almost unnoticed by the *Post*.) When Israel invited reporters to see what the PLO had done to Damur in the six years since it had overrun it, the *Post*'s William Branigan gave ten paragraphs to PLO sacrileges and nine to the damage caused by Israeli fire even though the bulk of destruction to Damur was caused in its 1976 conquest. When Israel opened Beirut's museum so that reporters could see the desecration that had been done by the Syrian and PLO forces who had turned it into a military position, Mr. Branigan managed to find inside an Israeli soldier whom he quoted as expressing misgivings about his government's policy toward the PLO. It seemed that wherever it went the *Post* found a way of getting its message across.

News Magazines

Time and *Newsweek*, astonishingly similar in style and subject matter, operate under two different principles of journalism. *Time* still proclaims its adherence to the principle bequeathed by Henry Luce that it is impossible to disentangle fact from opinion, so why try. *Newsweek*, on the other hand, holds closer to the standard to which the better American newspapers aspire of distinguishing fact from opinion. *Newsweek*'s articles "do not have a heavy content of opinion," says its foreign editor, Tom Mathews. "Our pieces attempt to be as honest, fair, and accurate as humanly possible." That is a standard that *Newsweek*'s reporting on Lebanon did not always meet.

Newsweek, like others, was careless in its war statistics. In its June 28 edition, *Newsweek* reported that "since Israel's invasion began...up to 9,500 civilians have been killed. As many as 600,000 people are homeless." (June 28, p. 21) The figure 600,000 homeless was repudiated by the Red Cross, which had been the original source for the figure, by June 18, in time to beat

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the deadline for *Newsweek*'s June 28 edition. (The Red Cross revision was reported in *Time* on June 28.) The figure 9,500 civilian deaths apparently came from rounding off the Lebanese police figure of 9,583. But why round it off, except if one wonders how the Lebanese police could compute such a precise figure under the circumstances? Then one might also wonder how the Lebanese police, who had no authority in the places where most casualties occurred, could have any figure at all. Good journalistic practice would have required both naming the sources for figures and adding any reasons for doubt about their accuracy. *Newsweek* did neither; it simply borrowed these numbers and presented them as fact, guarded only by the meaningless modifiers "up to" and "as many as."

This was not *Newsweek*'s only inaccuracy in its coverage of Lebanon. In its June 21 issue, *Newsweek* reported that "the Israeli air force and ground troops reduced Damur to rubble." (June 21, p. 26) The fact that the bulk of the destruction of Damur was done by the PLO in 1976 was lost on *Newsweek* or at least on its readers. *Newsweek* repeated its erroneous account, with embellishments, a week later:

> In the rubble of the seaside town of Damur, 9 miles south of Beirut, there was nothing to be seen but destruction. The Israeli onslaught had destroyed almost every house and apartment block...(June 28, p. 25)

The fact that Israeli fire had caused many casualties and much damage seems to have led some reporters to relax standards of accuracy so long as they evoked the proper images of death and destruction. Thus, *Newsweek*'s first "special report," which covered the first week of fighting in Lebanon, contained this passage:

> After the waves of terror bombing and indiscriminate shelling no one could count the bodies buried in the rubble of Lebanon's coastal cities. Hundreds of thousands of refugees huddled on open beaches and scavenged for food and water. (June 21, p. 21)

Almost none of this is true. Although much dispute remains about Israeli targeting during the siege of Beirut, especially its last days, there was surely no "terror bombing" or "indiscriminate shelling" during the first week of fighting. Refugees, who may never have numbered hundreds of thousands, were not left on the beaches after the fighting ended but returned to their homes, most of which were intact. *Newsweek*'s "special report" concluded with the assertion that "the Israelis had demolished quiet villages, pul-

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verized quiet neighborhoods. . . .'' (June 21, p. 26) But Israel didn't pulverize any quiet neighborhoods. It bombed some quiet neighborhoods that held PLO positions, but this occurred weeks after this story was written. And whatever villages *Newsweek* was thinking of, its spokesmen now can name only one, Ketrmaya, and that was only partly destroyed.

Newsweek's exaggeration shaded into invention during the intense Israeli bombardment of West Beirut in early August. Here *Newsweek* reported that ''the attack was so concentrated and so prolonged that the Beirut version of a firestorm developed.'' (Aug. 16, p. 12) The ''firestorm'' was not reported in any other news outlet covered by this study, and it is hard to see how it could have been missed, especially by the television cameras, not to mention by *Newsweek*'s own photographers who failed to capture a picture of the ''firestorm,'' forcing *Newsweek* to go with a plain photo of smoke arising from downtown Beirut captioned with reference to the ''firestorm'' as if that made up for what the camera missed.

Like the *Washington Post*, *Newsweek* exhibited an underlying sympathy toward the PLO and a parallel lack of sympathy toward Israel. This was most clearly expressed in *Newsweek*'s second ''special report'' on the Lebanon crisis which ran on August 16 under the front-page headline: ''The Palestinians: Where Do They Go From Here?'' This was during the siege of Beirut and the negotiations over a PLO evacuation. The question of the moment was the destination of the PLO, not of the Palestinians. *Newsweek*'s title apparently was intended to convey its view that the two were inseparable: that Palestinian nationalism had to be satisfied and that the PLO was its necessary agent.

The heart of the ''special report'' was a dramatic account of Palestinian national feeling. ''A Yemeni Jewish family now lives in the house where [Dr. Daoud] Hanania grew up, but like most Palestinians he has almost total recall of his former home,'' (p. 12) said *Newsweek* while reporting a few paragraphs later that, due to a high birth rate, most Palestinians are children. While explaining that he would not move from Amman, where he serves as director of medical services for the Jordanian army, to live in a West Bank Palestinian state, Dr. Hanania nonetheless told *Newsweek* that ''if you ask my young son where he is from he will tell you, 'from Jerusalem.' '' *Newsweek* also reported that among the Palestinians in Kuwait, ''Many. . . buy plastic orange trees to remind them of the orange groves they recall from childhood,'' prompting readers to wonder why so many of those Palestinians

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who came from orcharding families should have chosen Kuwait, of all places, as a home of exile. Not content with plastic orange trees, another Palestinian in Kuwait told *Newsweek* that he is "thinking of" moving to Amman because there "I can breathe the air coming from Palestine," a revelation that perhaps explains Dr. Hanania's contentment to remain in Amman. Finally *Newsweek* reported gravely that a fourteen-year-old American of Palestinian extraction who lives in Skokie, Illinois, worries that he is "losing the roots."

A Question of Moderation

Given such a strong sense of national deprivation, the violence of the PLO seems natural to *Newsweek*: "The surpassing sense of grievance and injustice produced the atrocities of PLO terrorism." But despite their just anger, mainstream PLO leaders, notably Yasser Arafat, are moderates, so *Newsweek* readers have already been given to understand repeatedly in previous issues. But now, thanks to Israel, "Arafat is expected to come under pressure from Palestinian radicals to resume the international terrorism of a decade ago." (June 21, p. 20)

Newsweek's idée-fixe that Mr. Arafat is a moderate gave rise to one of *Newsweek*'s more egregious errors of fact when it reported that, given the impending radicalization of the PLO, "the Popular Front for the Liberation of Palestine . . . is likely to gain recruits attracted to its infamous Black September past." (July 19, p. 20) Black September, which carried out the massacre at the Munich Olympics and later the assassination of Saudi and U.S. diplomats, is now generally admitted to be an arm of the most "moderate" of all PLO groups, Mr. Arafat's own Fatah, not the PFLP.

But if Mr. Arafat, the revolutionary terrorist, is a moderate, then what stands in the way of peace? It must be that Begin, the conservative parliamentarian, is an extremist. While in one issue *Newsweek* reported that the Palestinians, "forced to live in a Diaspora," are just like the Jews (Aug. 16, p. 16), in another issue *Newsweek* hinted that the Israelis are acting a bit like the Nazis. Choosing to quote an anonymous U.S. military official who said that if Israeli forces went into Beirut after the PLO, " 'Beirut would look like the Warsaw ghetto,' " *Newsweek* added: "If the Israelis perceived that irony, they gave no indication." (July 5, p. 37) But had the Israelis and PLO fought a bloody showdown in Beirut, it would have left that poor city looking like any number of other cities that have been fought over in recent

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times, not like the Warsaw ghetto, which was razed, and which therefore makes a particularly inapt analogy. What then can be the reason for the reference to the Warsaw ghetto—either on the part of the anonymous official or on the part of the *Newsweek* writer who chose to immortalize his words—except to raise the analogy of Israelis to Nazis?

Elsewhere *Newsweek* described Israel as imperialist, explaining somewhat incoherently that "the West Bank—like the Gaza Strip—represents a last bastion against Israeli expansionism," (Aug. 16, p. 20) suggesting that were these territories not in the way, Israeli forces would be marching on to Amman and Cairo. If *Newsweek*'s words make no sense on their face, they bear an uncanny resemblance to the theme of the PLO Covenant that the very creation of Israel was itself an "invasion," and that the expansion of Israel's borders in the process of self-defense in 1948 was a further act of imperialism. Could there be a method in *Newsweek*'s madness?

Given its attitudes toward the PLO and Israel, it was not surprising that *Newsweek* quoted approvingly former under secretary of state George Ball's complaint that " 'U.S. policy in the Mideast has been made in Israel for a long time.' " (July 19, p. 14) Nor that it derided the Camp David accords: "The outcome in Lebanon...tore the last figleaf away from the Camp David efforts for a peaceful solution to the Palestinian problem." (June 21, p. 16) Nor that it dealt harshly with Israel's ally, Bashir Gemayel: "Emboldened by Israel's support [Gemayel] seems more interested in settling old scores with the Muslim majority and its Druse sect than with real reconciliation." (Aug. 23, p. 22)

Newsweek's coverage of the Israeli-PLO war in Lebanon may have been summarized by the conclusion to its August 16 "special report" in which, alongside a brief guest essay by a dovish West Bank Palestinian, *Newsweek* commented, "The guns in Beirut drown out such dovish sounds." Perhaps *Newsweek* forgot or wished to make its readers forget that, for almost a generation, guns in the West Bank, in PLO hands, have not merely drowned out, but snuffed out, any voices that expressed the wish for peace.

Time magazine's coverage of the war and siege in Lebanon reflected its philosophy that fact and opinion are inseparable. *Time* disapproved of Israel's action and said so in a rather straightforward way in many of its articles. Just as the Israeli invasion began, *Time* commented that "even before the invasion, the arithmetic of Israeli retribution for the shooting of Ambassador Argov—more than 200 for 1—seemed tragically askew." (June 14, p. 45) Two weeks later *Time* observed that:

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> Both the British and Israelis applied short term solutions to long-range problems. Both could have avoided armed conflict through negotiations (though this would have been harder for the Israelis), but either because of carelessness, stubbornness, arrogance or suspicion, each chose not to. (June 28, p. 9)

Unabashed Editorializing

Some of *Time*'s editorializing seemed almost tautologous, as when it commented that "to the innocent victims of Israel's push northward there was little that could justify the sufferings" (June 28, p. 21), as if innocent victims often feel otherwise. Sometimes *Time* was tendentious, as when it argued that "the West's failure to solve the Palestinian problem has had a lot to do with giving Islamic fundamentalism its anti-western basis of action." (July 26, p. 25) The Palestinian problem was created deliberately by the Arab states in order to signify their refusal to accept the existence of Israel even after their effort to strangle the newborn state in 1948 had failed. It was neither within the power nor the responsibilities of the West to solve this problem. Despite the Ayatollah Khomeini's militant support for the PLO, the wellsprings of anti-modernism that feed his fundamentalist movement—inspiring adolescents to volunteer as human mine detectors—manifestly go much deeper than disappointment at the failures of regional diplomacy.

Sometimes *Time* sounded as if its writers inhabited some planet other than this one, as when it sermonized that the "militarization of Israel's goals and policies...weakens the fragile bonds that hold the Middle East together...," (Aug. 23, p. 31) as if unaware that the main bond that has held a large number of Middle East nations together is the desire to be rid of Israel.

Even given these foibles *Time*'s unabashed editorializing often seemed fairer than *Newsweek*'s practice of insinuating its opinions into its news stories through inaccurate or tendentious reporting. The hitch was that *Time* also engaged in these practices. Perhaps fact cannot be separated from opinion, but *Time* sometimes seemed unable to separate fact from fiction as well.

When the Israelis crossed into Lebanon, the UN peace-keeping force in the area did nothing to stop them. One exception was a dauntless group of Nepalese Gurkhas who bodily blocked a bridge across the Litani river. "Drivers of some 100 Israeli tanks were finally ordered simply to overrun the blockade pushing the Nepalese aside," reported *Time*. (June 21, p. 17) This was a small incident, but an attack on UN forces served to highlight the ruthlessness of

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the Israelis and their contempt for international authority. . . except that it never happened. The story of the bravery of the Gurkhas was true, but not *Time*'s account of the outcome. *Newsweek* reported on the same event that "the Israelis taunted and threatened the Gurkhas to no avail—then set up a pontoon bridge and crossed the river farther to the north." (June 21, p. 21) Subsequent reports corroborated the *Newsweek* account.

In its August 9 issue, *Time* quoted the U.S. State Department's expression of regret that many innocent people had been killed or wounded in Lebanon. Then *Time* added: "No such regrets were expressed by the Israeli government," (Aug. 9, p. 24) an assertion that was just false; the Israeli government had repeatedly expressed just such regrets (for example in statements on June 30, July 23, and August 3). More important than expressing regret, Israel also had issued orders of battle to the Israeli Defense Forces that were designed to minimize civilian casualties at the expense of Israeli soldiers, for example, not to shoot into buildings until shot at first. These orders received scant attention in *Time*. On August 15 Israel announced its offer of medical care to all civilians injured during the siege of Beirut. The announcement went unmentioned in *Time*.

A Missing Story

Another story that was missing from *Time* was the happiness of the southern Lebanese to be rid of the PLO. *Time*'s chief of correspondents, Richard Duncan, said that though aware of the story, *Time* didn't use it because "we were jumpy about the legitimacy of the story" due to the presence of Israeli escort officers at interviews with inhabitants of the region. Mr. Duncan said he wanted to check the story further but "because of other aspects of the story breaking that week we didn't get this one staffed sufficiently to remove the doubts." But in an article about casualties in its June 28 issue, *Time* said, "To look into the plight of the civilians who are in the path of the invasion, *Time* sent four journalists into the area." Apparently there was more staff available for some stories than for others.

On August 30, *Time* reported that the PLO had agreed to withdraw from Beirut "as early as July 3," and that all subsequent negotiations were over details, "even as the Israelis shelled West Beirut again and again in the hope of speeding up the withdrawal." (Aug. 30, p. 24) The Israelis, it would seem from this account, had shed a lot of blood just to save a little time. In fact,

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as Thomas Friedman's reports in the *New York Times* made clear, the original PLO agreement in principle to withdraw was so hedged with conditions and loopholes as to constitute no agreement. To keep its options open, the PLO repeatedly denied to its own members, until a week into August, that it would leave at all.

In its July 5 issue, *Time* repeated a BBC report quoting two Norwegian doctors who had been arrested by Israel at a PLO-run hospital in southern Lebanon on suspicion of being PLO members. The doctors claimed they had seen wide-scale abuse of prisoners by Israeli captors including beatings that "killed at least ten men before their eyes." (July 5, p. 36) The two Norwegians and a Canadian colleague, who were released by the Israelis after pressure was brought by their governments, widely broadcast these accusations, but there are many reasons to doubt their truthfulness. Such behavior would be radically at odds with past Israeli behavior, although the PLO has often made similar accusations in the past, none of which have stood up to impartial scrutiny. Details of the doctors' story seemed to change in different tellings. And Western press interviews of Arab detainees subsequently released from the same detention camp where the three doctors were held elicited denials of serious mistreatment. But when *Time* ran the BBC account it followed the words "killed...ten men before their eyes" with these words: "Reflecting on such scenes, a western ambassador in Beirut remarked sadly: 'I ask myself what has happened to those Jews who were filled with spirit and light....' " *Time*'s unmistakable implication was that the doctors' far-fetched tale was true.

In its report on the intense Israeli bombardment of West Beirut in the first week in August, *Time* declared: "The Israeli attacks were directed not just against Palestinian military positions but at hospitals, schools, apartment houses, government offices and shipping centers. Everything became a target." (Aug. 16, p. 21) The accusation that the Israelis were *aiming at* nonmilitary targets was not new for *Time*. *Time* had reported about Israel's first air strikes after the attack on Ambassador Argov that "...attacks were made on such non-military areas as the popular Family Beach." (June 14, p. 45) But the August report made clear *Time*'s limitations in identifying military targets. *Time* reported that Israeli "tanks surged on to attack the Hippodrome, a race track in a once elegant park....The assault blocked the PLO's access to ammunition depots and nearby bunkers, and gave the Israelis a staging area for future operations." (Aug. 16, p. 15) *Time* did not report

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the fact, reported twice in the *New York Times* before *Time*'s account appeared, that the "Hippodrome...was a primary artillery and rocket position of the Palestinian guerrillas." (*NYT* Aug. 4, p. 1 and Aug. 5, p. 12)

Time's references to Israel were repeatedly critical: Israel and its leaders were called "stubborn," "outrageous," "troublesome." The PLO was not described in such terms, and sometimes *Time* seemed to puff the PLO as when it reported that it was the PLO's military effectiveness that "led Israel to call for a cease-fire with the Palestinians." (June 21, p. 14) Conversely *Time* seemed to play down the effectiveness of Israeli fighting men by playing up the superiority of the American weapons wielded by the Israelis, referring admiringly, for example, to "the finest fighter [planes] in the world, flying electronic marvels...." (June 21, p. 20) This may have raised eyebrows among *Time* readers who recall that less than one year earlier *Time* was decrying "the superweapon philosophy that...has ruled the Pentagon since the end of World War II." (July 27, 1981, p. 15)

Television

The television news reports have stimulated more controversy than any other part of the news coverage of the war in Lebanon. The Anti-defamation League hired media specialist David Garth to conduct a study of the television coverage of Lebanon. Given the importance of TV news—only three networks provide news to the whole country while surveys show that more Americans get their news from the TV than from any other medium—Mr. Garth's study may be only the beginning. The basic problem of TV news coverage of Lebanon had nothing to do with bias. It had to do with the nature of the medium. "The nature of television news demands that it show whatever horror is available," wrote the syndicated columnist Ben Wattenberg. (*Philadelphia Inquirer*, July 8, 1982) This means, said Mr. Wattenberg, that in societies with a free press, "every bit of the horror that any war produces is in everybody's living room the next day." Had television been around to capture the gore of the U.S. Civil War, commented George Will on the same point, the United States would be two nations today.

In Lebanon this summer the vast bulk of the eye-catching horrors were caused by Israeli guns and bombs, making it inevitable that the portrayal of these events on the TV news would create a kind of *prima facie* case against Israeli actions. This led some pro-Israeli spokesmen to suggest that the press should have worked to

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counteract this effect by reporting more on the context of Israeli actions. But one man's context is another man's distortion. It is doubtful, to say the least, that a mandate to "explain" the news more and report it less would result either in a higher quality of journalism or more favorable coverage of Israel. Mr. Wattenberg says that we have yet to come up with the answer to how free societies can protect themselves against the disadvantage at which the advent of televised wars puts them. Perhaps there is no answer, but it seems not too much to ask of the networks that they should be aware that the emphasis on visuals that their medium demands can have a distorting as well as illuminating effect, and that they should hold themselves to high standards of objectivity, taking care not to compound such distortions. None of the networks achieved this rigorous standard in reporting on the events in Lebanon. CBS, however, seemed to be trying the hardest, and it succeeded a good part of the time. ABC's coverage was erratic; NBC's gave the impression that the network was on a crusade.

In addition to the central importance of visuals to TV news, another factor that worked against Israel was Israeli censorship, which apparently was a good deal tighter than it had been during past Arab-Israeli wars. This seemed to anger the networks, which responded by accompanying almost every news report from Israel with an announcement of the existence of Israeli censorship.

The result was that Israel had more attention brought by the networks to its censorship practices this summer than any other nation has ever had, but Israel's practices are a good deal less restrictive than are those of most other countries. This anomaly arose from the fact that Israel allowed journalists (after the first several days of fighting) a great deal of freedom of movement but then insisted on screening their films and scripts. In many less free countries, journalists simply aren't allowed to move about freely, especially not to war zones. The U.S.S.R. has never censored a U.S. TV news report on the fighting in Afghanistan because no U.S. TV cameras could get anywhere near the war zone from the Russian side. This applies not only to unfree countries. Britain this summer denied press access to the Falklands.

The anomaly is not the fault of the networks. They are right in wanting to inform their viewers of censorship when it is imposed on them. On the other hand, they could hardly inform their viewers each night of all the potential newsworthy stories they are unable to report due to the restrictive practices of governments. Yet at some point in the months of June, July, and August, those re-

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sponsible for the network news might have realized that their nightly, often multiple, references to Israeli censorship were having the effect of conveying a distorted impression. The *New York Times* came to just such a conclusion after prefacing each war-related dispatch from Israel during the first weeks of fighting with the line: "The following dispatch has been subjected to military censorship." The *Times* decided that its readers had gotten the message and it shifted to a policy of announcing only those instances in which the censor actually altered a dispatch. At a minimum the networks might have taken some air time to explain the vicissitudes of news coverage in various parts of the world, as ABC did on one occasion, to assist their viewers in putting the recurrent references to Israeli censorship in perspective.

The networks might also have given their viewers a better account of PLO "censorship." PLO censorship of course was not formal—no one had to submit scripts. But there were things the PLO didn't want shown, its gun positions for example, whether operational or already destroyed by enemy fire. This may have been for reasons of military security, but the Israelis already knew the locations of PLO gun positions both from intelligence reports and because they received fire from those guns. Another reason why the PLO may not have wanted its guns shown is that it was working assiduously to create the impression that the Israelis were hitting only civilians. Whatever the reason, the PLO method was straightforward. When cameras were aimed at something the PLO didn't want photographed, armed men would wave the cameras away. This is effective and it is has the additional benefit that it tends not to be reported because it touches upon the journalistic ethic that holds it unmanly to make much complaint about intimidation. During the months of the war and siege in Lebanon, there were three references on the TV news to this PLO practice, and all were in passing.

On July 9, CBS reported: "PLO fighters have moved to the center [of Beirut], storing guns and storing ammunition, though they won't let that be photographed."

On July 12, CBS reported from Beirut's embassy row: "Palestinian gunners patrolled the area constantly, though the PLO denied there are military targets here. A cameraman who tried to photograph one gun position right next to an embassy was waved away."

The same night, ABC reported: "The PLO does not permit pictures of military installations hit, but destruction to civilian and official [PLO?] property reflected the ferocity of the [Israeli] artillery onslaught."

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No network gave its viewers a full account of these PLO practices, and NBC never mentioned them at all.

CBS

One way that CBS distinguished itself from its competitors was that, like the *New York Times*, CBS gave its viewers more stories that showed Israel's side of the conflict. CBS showed no less footage than did its competitors of Israeli shells crashing into West Beirut, of desperate rescue workers digging through rubble, of wounded patients in West Beirut hospitals. But CBS also ran an interview with a Lebanese resident of West Beirut who described how he and neighbors armed to keep PLO gunners off their roofs so as not to make their buildings targets (June 28). After a PLO-run tour of bombed-out apartment buildings, CBS's Don Kladstrup said:

> The PLO denies hiding weapons in such places. "Rules forbid it" according to a spokesman. What is not said is that PLO officials live and work here, the very nerve center of their organization is nearby. (June 20).

On another occasion CBS ran footage from within an *East* Beirut hospital showing wounded who had been the victims of PLO fire. On at least four occasions, CBS broadcast reports showing the pleasure of Lebanese—including Christians from Damur and Moslems from Nabatiye—at being liberated from the PLO.

Another virtue of CBS's coverage, for which much credit must go to anchorman Dan Rather, was the care it showed in the use of language. Except for the reporting of Allen Pizey and Bob Simon from Beirut, CBS tended to avoid the tendentious or loaded wording that was used often by Peter Jennings, Barrie Dunsmore, and Mike McCourt on ABC, and by almost everybody on NBC.

If CBS strove harder than its competitors to preserve its objectivity, that was not because it supported Israeli policy. The closest thing to editorials run by CBS were a number of commentaries by Bill Moyers, which, though tempered by an effort to understand Israel's point of view, were clearly critical of Israel's actions, sometimes hyperbolically so. On June 15, Mr. Moyers said that Israel had waged "total war" and added that "war unbounded follows the logic of hornets—everything in their path is enemy." We now know that in its march to Beirut, Israel took great pains to sort out what was enemy and what was not, and far from being a "total war," the war in Lebanon will likely enter textbooks as an example of limited war. That Mr. Moyers' description and others like it misrepresented how Israel behaved in its drive through south-

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ern Lebanon has been confirmed not only by correspondents sympathetic to Israel, like Martin Peretz of the *New Republic* (Aug. 2, pp. 15–23), but also by the accounts of such neutral or unsympathetic correspondents as David Shipler of the *New York Times* (July 14, p. 1), Peter Jennings of ABC ("Viewpoint," Oct. 20), and columnists Evans and Novak (*Washington Post*, June 25, p. A31).

On other occasions, CBS correspondents expressed some of the principal themes of critics of Israeli policy. In a CBS special on the third day of the war, Dan Rather said, "It strikes me that the Soviet Union, at least in the short run, is—whatever happens—the beneficiary...." Bill Moyers replied, "I think that's true, Dan." On July 3, Don Kladstrup gave a report on the PLO that described Yasser Arafat as a moderate and stated that "until the Palestinian question is finally settled, nothing that happens here [in Beirut] will really matter."

On July 1, CBS gave several minutes to a feature portrait of a nineteen-year-old PLO fighter, Fuad Haq Ibrahim. Fuad is strong, fearless, and handsome. "Before Israeli bombs began falling on his neighborhood," says CBS, Fuad was "hanging wallpaper, running a restaurant, and studying for a degree in mathematics." His spare time was spent writing poetry. He reads one poem on camera. It is about the thing that, as a typical PLO member, pains Fuad the most—violence and death. The PLO, so viewers might have concluded, were not only patriots but a veritable race of renaissance men.

CBS's strength was that it allowed its editorial views to skew its reporting less often than did its competitors. But it, too, had its lapses. On June 12, CBS gave one of its first reports on total casualties in Lebanon, stating that "a PLO spokesman in Washington estimated tonight that Israeli forces have killed or wounded 40,000 people so far in Lebanon." This report, which was not carried by the other networks, was not accompanied by any estimate or denial from any other source. The Israelis had not yet announced their own estimates, but three nights later when ABC reported Lebanese police estimates of 10,000 dead and 16,000 wounded, it also reported that "Israeli officials say these figures are completely inconceivable."

Overkill Rhetoric

CBS occasionally lapsed into hyperbole as in one report on June 14 from Tyre. It was introduced with these words: "For most Lebanese in the path of the Israeli army, the military fight is

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over. But Bob Faw tells us another fight goes on. The one to stay alive." Mr. Faw then said that he was reporting from "Tyre—or what's left of it." Food and medical supplies, he said, were inadequate. The "devastation" was such, said Mr. Faw, that "some [Israelis] are even beginning to wonder out loud whether the military went too far, destroyed too much...was guilty of overkill." Then he showed film of a refugee camp and said, "No water, no sanitation, no promise of relief" and indicated that this was the plight of most or all civilians in the areas through which Israel had moved. He concluded, "What is clear is that here...the survivors are the losers."

On some occasions CBS's reporting from Beirut was tendentious. After Israel's bombardment of August 4, Dan Rather reported, "In their wake lay the efforts to negotiate a peaceful end to this war...." This was an echo of Allen Pizey's report on a previous instance when Israel resumed bombing, on July 22: "Before today's bombing there had been cautious optimism here that a political solution could be worked out." A CBS viewer would have come away thinking that each Israeli bombardment derailed the evacuation negotiations. He would never have learned what Thomas Friedman later reported in the *New York Times*—that the Israeli bombardments, whether justified or not, had the effect of hastening the negotiations.

Also on August 4, CBS's Bob Simon said that the bombing "was Israel's reaction to the latest set of proposals concerning the peaceful withdrawal of the PLO from Beirut." Three days later Mr. Simon said, "Arafat's political gains, his ever-increasing prestige in the West, have only provoked the Israelis to intensify the violence of their attacks." Both of these allegations were at best far-fetched speculation disguised as news. Their central implication, that Israel was trying to sabotage the negotiations, was given the lie by the ultimate success of Ambassador Habib's mission.

There were also occasions when CBS was guilty of simple inaccuracies or omissions of relevant facts. On June 4, the first day of Israeli air strikes, CBS reported, with accompanying footage, "The capital's sports stadium was hit and there were casualties." CBS gave not a hint of what every reporter in Beirut must have known: this was a principal PLO military position—no sports had been played there for years. Almost every other media outlet reported that fact at once, such as NBC which said on the same night, "Palestinians stored weapons and ammunition here. The football field was a training camp for guerrillas."

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On July 5, CBS reported from Beirut that "the shelling was intense but one-sided. Syrian and Palestinian positions on a seacoast ridge next to the airport were mostly silent." But the same day ABC reported from the same location that "the Israeli artillery emplacement received several direct hits from the defending Palestinian mortar."

On July 23, Allen Pizey presented a report that "the dangers of disease are mounting" in West Beirut because of the disruption of water supplies. To buttress this point Mr. Pizey showed a few moments of an interview with a physician who reported that there were already cases of typhoid. CBS identified the physician as Fahti Arafat, head of the Palestinian Red Crescent. It did not inform its viewers that he is a member of the PLO and brother of the head of the PLO, nor that the Palestinian Red Crescent is an arm of the PLO.

On the whole, these transgressions were rather minor deviations from CBS's general effort to uphold high standards of accuracy.

ABC

ABC's coverage of the events in Lebanon displayed a mixture of qualities. Bill Seamans, ABC's Jerusalem bureau chief, provided a fuller account of the views and policies of the Israeli government than was available on any other network. And ABC's Hal Walker did a better job of preserving a degree of professional detachment amid the death and mayhem in Beirut than did any other network correspondent reporting from that city. On the other hand, Peter Jennings, Barrie Dunsmore, Richard Threlkeld, and Mike McCourt all exhibited strong points of view to which they gave expression in their news coverage.

ABC had no editorials or designated commentaries like those by Bill Moyers on CBS or John Chancellor on NBC. The closest thing on ABC was a "status report" delivered by Richard Threlkeld three weeks into the war (June 25). Mr. Threlkeld said that "Israel...has suddenly started behaving like the neighborhood bully" when its troops "invaded the sovereign nation of Lebanon." But Lebanon was not sovereign; it had formally ceded rule over parts of its territory to the PLO—a would-be government that was at war with Israel—and had ceded *de facto* sovereignty over other parts to Syria. Mr. Threlkeld said that, because of Israel's bellicosity, "Two-thirds of the United Nations boycotted Prime Minister Begin's defense of the Lebanon invasion. A lot of the world has begun to see Israel differently." But Mr. Threlkeld

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should have known, or could have learned from ABC's UN correspondent, that much of the UN—the Arab bloc (except Egypt) and its Third World allies—always boycotts Israel's representatives when they address the General Assembly. What swelled the ranks of the boycotters on this occasion was the addition of the Soviet bloc, an action motivated, so Mr. Threlkeld's viewers must have inferred, by the fact that Israel's violent actions had offended the deepest humanitarian sentiments of President Brezhnev, General Jaruzelski, *et al.*

Mr. Threlkeld also reported that "Israel insists civilian dead were in the hundreds. The Red Cross says it was more like 9,000." This choice of words strongly suggested that the Red Cross figure was the correct one. Not only was the figure incorrect, but it also wasn't issued by the Red Cross. The Red Cross had publicized the number 600,000 homeless. But national totals for civilian casualties that were repeated in the press originated with arms of the Lebanese government or the PLO's Palestinian Red Crescent, not the Red Cross. Indeed the *Washington Post* of the day of Mr. Threlkeld's broadcast reported an interview with Francesco Noseda, the ICRC representative in Beirut, in which Mr. Noseda acknowledged his partial responsibility for the erroneous homeless figure but "heatedly denied the 10,000 figure for the death toll came from his office." (June 25, p. 27)

Mr. Threlkeld also said that "the Lebanese. . . are suddenly remembering that they didn't really like the PLO anyway," as if the manifest pleasure of many Lebanese at the PLO's departure was somehow feigned. And he capped his report by confusing Switzerland with Finland.

Perhaps the most important person in ABC's coverage of Lebanon was its chief foreign correspondent, Peter Jennings. Mr. Jennings, who has lived in and written about the Middle East, brought to his coverage a great deal of background knowledge that was an asset to ABC; but he also brought some well formed opinions that were expressed in biased news reports.

On June 9, he said:

> The Israelis speak of reestablishing a sovereign government in Lebanon but the Christians are the most powerful now, with the Israelis' support, and have little interest in sharing power with the majority Moslems. In Lebanon the failure to share power equitably has always been a recipe for disaster. It has never led to a more secure Israel.

Whatever the validity of Mr. Jennings' interpretation of Leba-

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non's history, his final fillip was an unjustified thrust against Israel whose goal *vis-à-vis* the Christians was to support one of its precious few regional allies not to promote domestic inequity in Lebanon. Moreover, Mr. Jennings was just wrong on the historical record. Israel had a secure border with Lebanon from 1948 until the arrival of the PLO in 1970, irrespective of the internal situation in Lebanon, and it had an insecure border from 1970 until 1982, also irrespective of domestic politics in Lebanon. The crucial factor affecting Israel's security, in short, had nothing to do with equity in Lebanon; it had everything to do with the presence or absence of the PLO.

On July 22, Peter Jennings opened ABC's broadcast with this: "Israel broke the cease-fire in Lebanon today with a vengeance." It has been widely alleged that Israel initiated many of the breaches of the cease-fire, or that it seized on very small pretexts for retaliatory breaches. Whatever the truth of these allegations, they had no bearing on the events of July 22, which was the most important cease-fire breakdown of the war because it followed a four-week lull. As all the media reported, including Bill Seamans later in ABC's program, the PLO had ambushed and killed five Israeli soldiers, a large number for Israel. That was what broke the cease-fire and brought on Israeli retaliation.

By the day after the famous meeting between Yasser Arafat and Congressman McCloskey, all the major media, including ABC, had made clear that the heralded change in the PLO's position was bogus. But in introducing a report in which Israeli spokesmen said just that, Mr. Jennings noted snidely, "The Israeli reaction to Yasser Arafat's declaration has been predictable." (July 26)

The next night he noted the expiry of the Arab League mandate for Syria's presence in Israel and said, "Technically, at least, Syria like Israel is now an illegal foreign presence" in Lebanon. (July 27) But, as has been mentioned, the illegality of Israel's action has not been clearly established. The next night Mr. Jennings opened the news with these words: "It has been another day of carnage in West Beirut." (July 28) Reporting about Syria's views at the end of the Beirut seige, he explained that "Lebanon is Syria's soft underbelly" because Syria is surrounded by hostile neighbors: Iraq, Jordan, and Israel. This explanation seemed devoid of the spirit of critical scrutiny with which Israel's views were received by ABC and others. Mr. Jennings might have added that, except for Iraq, Syria's neighbors are hostile because of Syria's penchant for making war on them.

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State and Pentagon Correspondents

Another weakness in ABC's coverage was the reporting of its State Department correspondent, Barrie Dunsmore, who repeatedly went out of his way to work little digs at Israel into his stories. On June 6, Mr. Dunsmore reported the announcement of the evacuation of some U.S. Embassy personnel and dependents from Beirut. This, he said, "was a symbolic way of saying that the latest crisis in Lebanon was decidedly not in the best interests of the United States." As anyone who holds Mr. Dunsmore's job must know, while the withdrawal of an ambassador can be a way of making a diplomatic statement, the withdrawal of dependents and nonessential personnel is merely a response to danger.

On June 14, Mr. Dunsmore reported:

> Lebanese police said today that as many as ten thousand people may have been killed in the fighting. To deal with such casualty figures Israel seems to be gearing up a campaign to justify its actions. Israeli sources told ABC news today they had captured hundreds of tons of weapons and documents and have dealt international terrorism an extreme blow.

There were two pieces of news here. One was the Lebanese police casualty figure, which deserved to be reported and to be treated with a degree of skepticism. The other was the Israeli announcement of some of the documents and equipment they had captured. Mr. Dunsmore combined the two in a way that negated the second story by implying that it was nothing more than part of an Israeli effort at self-justification. At the same time he implicitly confirmed the fallacious Lebanese police statistic by saying this was the cause of Israel's need for self-justification.

Then he concluded:

> Some senior U.S. officials may take pleasure in the fact that terrorism has been dealt a blow and that there may be new opportunities to stabilize Lebanon. But some of those same officials are privately asking themselves and the Israelis, at what price?

The question of the price was a valid one about Israel's actions in Lebanon, as it is about any actions. But Mr. Dunsmore's choice of the words "take pleasure in" was a rhetorical way of cheapening the accomplishment of weakening international terrorism as if it were only a personal or vengeful interest of some officials, rather than an important national interest of the United States, as well as the rest of the civilized world. And things that officials were "privately asking themselves" were by definition things they were

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not sharing with Barrie Dunsmore, making clear that these sentences were simply a Dunsmore editorial.

ABC's Pentagon correspondent, John McWethy, borrowed a page from Mr. Dunsmore's book two weeks later when Israel released a compilation of the captured PLO documents that contained much interesting information both about the PLO and about international terrorism in general. Rather than report the story straight for the intrinsic interest of the documents, Mr. McWethy began by explaining that *Israel's* release of the documents was an example of the unlimited "flood of propaganda" engendered by the fighting. (June 29)

When Prime Minister Begin addressed the General Assembly, Barrie Dunsmore noted sardonically that his discussion of the right of self-defense was "an ironic theme for a disarmament conference." (June 18) But a diplomatic correspondent should know that Mr. Begin's topic—how to distinguish between aggressive war and defensive war and what legal recognition to give that distinction—has been the biggest single question confronting efforts throughout this century to create international instruments to prevent war.

Inaccurate Reporting from Beirut

The foibles of Messrs. Jennings and Dunsmore were compounded by some inaccurate and hyperbolic reporting from Beirut until late in the siege when Hal Walker took over much of the Beirut reporting from John McKenzie and Mike McCourt.

On June 11, before the cease-fire that ended the initial fighting, Mike McCourt reported that the Israelis were "launching random artillery fire into downtown Beirut." June 11 was a day of heavy fighting and artillery duels. It was a day when many PLO forces fled from their camps just south of Beirut to the center of the city. Some shells (on both sides) no doubt went astray, but the largest part of West Beirut went untouched, and Mr. McCourt's report, which was echoed by few if any of his colleagues, was simply misleading.

On June 21, Mr. McKenzie reported, "It quickly became apparent today that the Israelis were shelling indiscriminately on West Beirut. Terror bombs, they've been called. Even the Russian Embassy was hit." Mr. McKenzie may well have witnessed Israeli fire that appeared to him to be aimed at no apparent target. This could have been because he was not close enough to see or because the Israelis were acting on intelligence to which he was not privy or because of bad aim. This is illustrated by Mr. McKenzie's

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own example: The Russian Embassy grounds were hit because there was a military position right next to it. His term "terror bombs" was both false and irresponsible.

On June 28, Mike McCourt delivered this report:

> As they have written about Stalingrad and Berlin [historians] will write of the siege of West Beirut in 1982. Two square miles of West Beirut are now dust and mortar. The rest of the city, nearly all of it, resembles some ancient ruin. The Israeli siege has made most of West Beirut a ghost town. The toll in human terms has been appalling. Ten thousand dead, up to 25,000 wounded and more than half a million people, mainly Lebanese, left homeless.

The exaggerated comparisons to Stalingrad and Berlin may perhaps be excused. But what of the assertion about "two square miles of dust and mortar," a scene which somehow neither ABC nor anyone else was able to catch on camera. The refugee camps of Sabra and Shatilla, the principal PLO military strongholds in Beirut, were probably the most heavily hit targets in Beirut. The horrible September massacres at Sabra and Shatilla showed, among other things, that, though in a sorry state, the camps were still there even after the intense Israeli attacks of July and August. What, one wonders, could Mr. McCourt have been talking about back in June? Mr. McCourt's casualty statistics were presented without attribution or qualification. This was three days after the interview with the ICRC's Francesco Noseda appeared in the *Post* in which Mr. Noseda radically discounted the homelessness figure that he had been responsible for publicizing and heatedly denied responsibility for the statistic, 10,000 dead, because it was an obvious exaggeration. Perhaps it was with Mr. McCourt in mind that Peter Jennings, in an October 20 panel discussion on ABC's "Viewpoint," said of the exaggerated reports of destruction, "I think there was some shoddy reporting."

Finally, there is Mr. McCourt's assertion that "nearly all of [Beirut] resembles some ancient ruin." This, as well as his earlier report on "random shelling" and Mr. McKenzie's report on "terror bombs"—all in June—may be evaluated against Peter Jennings' evening news report of a month later, July 27, that the Israelis had that day "struck closer to the residential center of the city than they ever have before." A viewer who missed that single utterance would never have guessed that, throughout the entire weeks of the foregoing hyperbole, Israel had never struck downtown residential areas.

One other bad moment in ABC's coverage was on June 13

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when Chris Harper reported that "central Lebanon where there are virtually no Palestinians or Syrians" was "a scene of destruction." As the confusion of battle has lifted, one thing that has become clear is that at least in the early stages of the fighting Israel used its forces with selectivity and accuracy. ABC is unable to explain what exactly Mr. Harper was referring to, but what he said was false.

Finally, a word about ABC's response to Israeli censorship needs to be added to what has already been said about the response of all three networks. On June 22 and June 23 ABC reported that on those days it had been disallowed from transmitting its reports via the Israeli television satellite station as punishment for breaking Israeli censorship. ABC had taped an interview with Mr. Arafat in West Beirut, then carried it to Israel for transmission. The Israeli censor disallowed it, and ABC broadcast it in defiance. It is easy to sympathize with ABC's sense of injustice: censorship is often erratic and in this case the censor had cleared a more inflammatory Arafat interview on NBC at about the same time. ABC accused Israel of "an intolerable act of political censorship that in no way compromised Israel security, which was the stated reason for government censorship." (June 22) This position was repeated the next night. Israel's side of the dispute was reported in the *New York Times*. (June 26) Israel explained that while it would exercise only military censorship on reports from Israel's side of the battle line, its extension of its facilities for reports from the enemy's side was a favor that it would not allow to be used to its own political detriment. Whether or not this was a reasonable position was a question that ABC's viewers could have decided for themselves if ABC had seen fit to report Israel's position. But it did not—a self-serving decision that seemed ironically analogous to what ABC was accusing Israel of doing.

A second question about censorship concerned Syria. After several weeks of pointing out Israeli censorship, NBC began, on relevant occasions, flashing on the screen the words, "cleared by *Syrian* censors." (emphasis added) A few weeks later, CBS began to do the same. But in the time frame of this study, ABC did not use the words "cleared by Syrian censors" although it often broadcast from Syria and although it used "cleared by Israeli censors" almost daily. When asked about this, ABC press spokesman Alan Raymond explained that the failure to mention Syrian censorship was due to the fact that in this period, though the Syrians examined films, they, unlike the Israelis, didn't delete anything. Mr.

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Raymond conceded, however, that the reference to Israeli censorship was used irrespective of whether the Israelis deleted anything.

NBC

NBC exhibited none of the professional striving for objectivity that was apparent on CBS. Nor did NBC have anyone like ABC's Bill Seamens or Hal Walker to bring a degree of balance to its coverage. (An exception was the contribution of Marvin and Bernard Kalb, but their appearances were too infrequent to have much effect.) Like the *Washington Post*, NBC gave the impression that it was on a crusade. Unlike newspapers, television networks benefit from publicly licensed oligopoly, making NBC's posture less excusable than the *Post*'s.

John Chancellor set the tone for NBC. Chancellor does news "commentaries" several times a week on NBC. Because the other networks use far less commentary than does NBC, Chancellor enjoys a near monopoly on the expression of editorial opinion on the television evening news. In June, July, and August, Mr. Chancellor did about a dozen commentaries on events in Lebanon—they were consistently critical of Israeli policy. This is hard to square with the Federal Communications Commission's "fairness doctrine," which requires some effort to air conflicting sides of controversial issues. The fairness doctrine, however, is all but unenforceable, and deliberately so, because of the sound belief that it is better to err in the direction of letting the broadcasters get away with something than in the direction of too much government supervision of the news.

Mr. Chancellor made up his mind early. On June 7, he delivered his first commentary. "Israel is trying to buy a few years of peace at a terrible human and political cost and, incidentally, making American policy in the Middle East a shambles." The implication was unmistakable. The potential gains weren't worth the price: in a few years the PLO could rebuild in southern Lebanon, and Israel would be back where it started. But when it became clear that Israel was aiming at more than just a few years of peace, that it was aiming to rid Lebanon of the PLO forever, Mr. Chancellor was even more exercised. That led him to his August 2 commentary: "What in the world is going on? Israel's security problem on its border is fifty miles to the south. What's an Israeli army doing here in Beirut?" And then he went on, "The answer is that we are now dealing with an imperial Israel, which is solv-

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ing its problems in someone else's country." This tortured formulation seemed odd to those who remembered his June 16 comment that "no one is questioning Israel's legitimate security problems in Lebanon." Also on August 2, Mr. Chancellor pointed out about the high level of destruction in Beirut that "nothing like it has ever happened in this part of the world." Ever? Surely Mr. Chancellor has heard of the Bible, the Roman Empire, the Crusades? But even taking him not to have meant "ever," his assertion certainly must have come as good news to survivors of Hama, Syria, who otherwise might have been under the impression that their government had only recently razed their city or to those of Khorramshahr, Iran, which was reported destroyed in the Iran-Iraq war. Both cities once had populations near 200,000.

The August 2 commentary was a high point in Mr. Chancellor's crusade, and it evoked such a reaction that NBC read a couple of protesting letters-to-the-editor a few nights later while informing its viewers that its mail was equally divided between those opposing and supporting Chancellor. But August 2 was only one night among many. On June 8, Mr. Chancellor said, "Israel is using a blunt sword in its invasion of Lebanon," and added that "Civilians are suffering more heavily than units of the PLO," an assertion that seems to have been simply false at that time. On June 9 he called events in Lebanon a bloodbath and said, "The Lebanese say their country is being literally murdered."

On June 16, Mr. Chancellor commented that Prime Minister Begin faced a problem in the United States of "a growing feeling that Israel has turned into a warrior state using far more force than is necessary to solve its problems." In the same commentary, he stated flatly that the shooting of Israeli Ambassador Argov "was not the work of the PLO." Other journalists had reported evidence that Mr. Argov's attackers were from a group—alternately called Abu Nidal, after its leader, or "Black June"—that had broken from the PLO. The memory that "Black September" had originally been taken as a break-away group until years later when it was revealed to be a covert arm of Fatah led almost all reputable journalists other than Mr. Chancellor to treat this evidence with caution.

On June 22, at the end of Mr. Begin's visit to the United States, Mr. Chancellor complained that President Reagan had blown the opportunity to "use...this moment when Israel needs American support to force some kind of dialogue between the Israelis and the Palestinians," by whom Chancellor apparently meant the PLO.

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Two nights later, his commentary was aimed at Israeli censorship, the result of which, he said, was that "censorship in the Middle East is beginning to be a real problem." Why the decades-old restrictions on journalists' freedom in every other one of the dozens of countries that constitute the Middle East was not a real problem, Mr. Chancellor did not explain.

On July 13, Mr. Chancellor prognosticated sagely that in trying to root the PLO out of Lebanon, "the Israelis bit off more than they can chew." On August 13, he complained that the world is confused about where America stands on Lebanon because American political leaders, apparently intimidated by Jewish voters, were afraid to give expression to the American people's clear disapproval of Israeli actions. By implication, the causes of international confusion had nothing to do with PLO, Syrian, or Soviet propaganda.

Poker-faced Delivery

The effect of Mr. Chancellor's commentaries was reinforced by the reporting of NBC's anchorman, Roger Mudd. Despite his poker-faced delivery, Mr. Mudd's words—which he writes himself—were crafted to convey a relentless, though sometimes sardonic, message of criticism of Israel's actions.

On June 9, NBC reported on Israel's efforts to knock out Syrian surface-to-air missiles in the Bekaa Valley. Mr. Mudd said, "The decision to go after the Syrian missiles undoubtedly means that the superhawks are now in ascendancy in Tel Aviv." This was sheer nonsense. Once Israel and Syria were engaged there was no doubt that Israel would go after the SAMs—it was one decision that was not at all controversial in Israel. Mr. Mudd's inference that such an action would have been taken only by "superhawks" bespoke the same command of the facts that led him to place the Israeli government in Tel Aviv, when its seat is in Jerusalem.

The next night Mr. Mudd announced, "The Israeli government today proclaimed a new and third objective in its invasion of Lebanon." Whatever he may have meant by this, what he *said* was not true. There was much speculation by others about Israel's motives, but the Israeli government never announced a second objective, much less a third. It said all along that its sole objective was to secure a peaceful northern border.

On June 23, Mr. Mudd reported:

> It now develops that Israel's invasion of Lebanon was no impetuous military adventure. It was well planned, well executed

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and it also involved a campaign against the Palestinians and the PLO in Jordan's West Bank, which is occupied by Israel.

The words "it now develops..." served only to create an aura of something sinister, underhanded in Israeli behavior. This was three weeks into the Israeli action, a bit late for the observation that it was well planned and executed. Of course it was planned; what does Mr. Mudd imagine governments do? His assertion about a campaign against West Bank Palestinians was the preface for a report by NBC correspondent Martin Fletcher about rioting on the West Bank in opposition to Israel's actions in Lebanon and about Israel's response to the rioting. There was nothing on which to base Mr. Mudd's suggestion of a premeditated attack against West Bank Palestinians. His reference to "Jordan's West Bank" once again demonstrated the mastery of Middle East history and geography that led him to confuse Tel Aviv with Jerusalem. The West Bank of the Jordan River is a territory seized by Israel in 1967 from the Kingdom of Jordan, which had seized it in 1948 from the part of Palestine that would have become a new Arab state under the UN partition plan. Today, the territory is claimed by Israel and by the PLO, but not by Jordan, which, in effect, recognizes the PLO's claim.

The next night, NBC reported on a powerful car-bomb explosion in West Beirut that killed and injured many people. No one knew who was responsible for the bomb; no group claimed credit. However, Mr. Mudd gave the car-bomb report a lengthy introduction whose sole purpose seemed to be to suggest that Israel had planted the bomb. He said:

> The Reagan White House revealed today that Prime Minister Begin promised President Reagan on Monday that Israel would not try to capture Beirut. By making Israel's pledge public, of course, the White House was bringing pressure on him to live up to it. But as we will see in a moment...sending in an army is not the only way to destroy a city. It can be shelled to death from without and within. (June 24)

The Jewish Lobby

On June 28, Mr. Mudd reported:

> Many members of Congress hesitate to alienate the powerful Jewish lobby by rallying to the Arab side. Congressman Nick Rahall...introduced a resolution two weeks ago that would suspend arms sales to Israel if the arms were used for ag-

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> gressive purposes. So far only thirteen members have signed the resolution.

It is true that congressmen hesitate to alienate the Jewish lobby, as they do any lobby, but a majority overcame its hesitation to support President Reagan's AWACs sales to the Saudis as they did on President Carter's F-15 sales. To make a story about the Jewish lobby out of the absence of support for the Rahall resolution was entirely without foundation. Congress is characteristically eager to follow the lead of the executive in international crises—especially, as in this instance, when the U.S. is working for a diplomatic solution—and the White House did not support Mr. Rahall. Nor is Mr. Rahall ordinarily looked to by his colleagues as a leader on foreign policy. Just as a number of Jewish congressmen have actively supported Israel over the years, so Mr. Rahall, an American of Arab ancestry, was strongly aroused against Israel's action. He took part of the ill-fated McCloskey delegation that traveled to Beirut to meet with Yasser Arafat. It took a lot less than the vaunted clout of the Jewish lobby to keep most congressmen from co-sponsoring his resolution.

On July 2, Mr. Mudd said:

> Prime Minister Begin claims the Israeli army has picked up 66 children aged 12 to 13 and armed with submachine guns who were recruited into the PLO. Begin asked, "Was there ever such an antihuman phenomenon in human history?" Later, however, a spokesman for Begin said that he had made a mistake and read from the wrong paper, and that the correct number was either two or twenty-two child soldiers.

The last sentence was delivered with the kind of deadpan sarcasm of which Mr. Mudd is a master. Together with the whole construction of Mr. Mudd's paragraph it made the story into a story about Mr. Begin, and made him out to be either a liar or a fool. The Israelis may have bollixed this story, but it was a striking one. They eventually released more than 200 captured PLO fighters in the age range twelve to fifteen. Some or all of these were not "recruited" but conscripted. The *New York Times* ran a moving feature on a couple of such twelve year olds who had been left by their officers to fight off the Israeli advance. PLO use of child-soldiers was newsworthy and revealing, but after pouncing on Begin's initial faux pas, NBC never returned to report the story once the facts were clarified.

That same night NBC had shown a report from West Beirut with the words: "There's a growing feeling of anti-Americanism.

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People here say it's your weapons the Israelis are using against us and with your approval." This accompanied footage of a collection of cluster bombs and shells that by implication had been gathered in Beirut. NBC gave no hint that this story was written from a PLO press conference where the cluster munitions were put on display. In contrast, one of the other networks ran the same footage with the simple announcement that it was a PLO press conference. There was a remarkable contrast between the abundant cooperation that NBC gave to this PLO public relations effort and the deep skepticism that it showed to Israel's slightly bungled public relations effort the same night.

On July 28, NBC's Martin Fletcher reported on the return to Damur of its Christian former residents who had been driven out in 1976. The Christians held a service in their church, which had been turned into a PLO ammunition dump. This story was introduced by Mr. Mudd with this sentence: "The war against the PLO has rekindled old hatreds." You didn't have to know much about Lebanon to grasp the absurdity of the implication that the Christian refugees from Damur were reconciled to the PLO until the Israeli offensive rekindled their antipathy.

On July 20, Mr. Mudd interviewed the foreign minister of Saudi Arabia during which Mudd asked the following "question":

> Your fear, Mr. Minister, I guess is that if the PLO leaves Beirut and goes, say to Syria, that it would give Israel an excuse to attack Syria simply because the PLO is now in a different country. Is that correct?

The premises of the question were not drawn from anything the Saudi Minister had been shown saying, but apparently were woven out of the questioner's own keen insights. The implication was that Israel had used the PLO presence in Lebanon as an excuse for its true goal—to attack Lebanon. During the course of the summer, there were many jaundiced interpretations of Israel's motives, but in this Mr. Mudd had a completely original one.

On August 4, he reported that "an Israeli official here in Washington indicated that his government has very little enthusiasm for the Habib mission, because he says it encourages the PLO to hold out for a diplomatic solution." This was both incoherent and false. No "Israeli official...in Washington" was reported anywhere else saying any such thing. The Israelis, though their terms were stiff, had been cooperating with Habib for two months despite the fact that the waiting put them in an excruciating posi-

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tion. The Habib mission, of course, was aimed, *per se*, at reaching a diplomatic solution.

The Question of 'Military Targets'

Another NBC correspondent who seemed to be on a crusade of sorts was the network's principal Beirut reporter, Steve Mallory. Mr. Mallory's specialty was to arrive at an area after it was hit by Israeli bombs or shells and announce the absence of any military target.

This pattern began on June 5, the second day of Israeli retaliatory air strikes after the shooting of Ambassador Argov and the day before Israeli ground forces moved into Lebanon. Israeli bombs severed the highway linking Beirut to southern Lebanon, by far the most important artery for PLO forces in Lebanon. Reporting from the point of attack on the highway, Mr. Mallory said: "Bystanders asked, 'Why? No military positions here.' " As the camera panned over roadside wreckage, Mr. Mallory described the scene: "Several cars were hit. A schoolbus. Fifteen died in the bus." Viewers could only imagine unspeakable scenes of torn little bodies being pulled from the schoolbus. But the bus was not a schoolbus, although it was a model of bus that is sometimes used as a schoolbus. The bus was the object of reports in newspapers, magazines, and television. All reports agreed that those aboard the bus were adults. They were in several instances described as construction workers. These reports appeared to originate with the PLO which still constituted the government in most of southern Lebanon, and it is possible that the passengers were something less innocent than a construction crew. It is certain that they were not children. It is possible that Mr. Mallory was just uninformed, but this is unlikely. He did not merely see the burned out bus; he also reported the number who died in the bus. The other reporters who gave the casualty statistics for the bus also reported that they had been told that the passengers were construction workers. Did Mr. Mallory get a different briefing, or did he deliberately mislead his viewers?

On June 11 Mr. Mallory reported on a bomb that hit a building in West Beirut. "There are no military targets here," he said. On June 17, Israeli shells hit Beirut airport apparently in connection with an effort to take the airport. Said Mr. Mallory, "No military positions here." Apparently nobody ever told Mr. Mallory that in wars, airports, especially large ones, are by definition military positions.

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Two nights later he said that Israel had engaged in "random shelling of civilian areas in the Lebanese capital." Then he focused on one bombed out family and said: "No military targets near their area." (June 19) Six nights after that, Mr. Mallory reported, "Israeli gunboats pound residential areas in central Beirut. No military positions here." (June 25)

This routine seemed to inspire his NBC colleagues in Beirut. On July 10, Jack Reynolds reported: "Last night in one section of the city Israeli shells hit seven embassies causing considerable damage. There is outrage at the Israelis. There are no Palestinian fighters here, they said." On July 27, James Compton reported on a Beirut apartment house that took a direct hit from an Israeli bomb that it "is at least a mile from any military concentration."

Israeli shells may have landed places where there were no military targets, but neither of the other networks nor the major print media reported on this happening with nearly the frequency nor the certainty of Mr. Mallory and his colleagues. A problem with this kind of report is how the correspondent, who arrives on the scene after the attack, can know with any certainty what the target may have been. The Israelis bombed buildings, innocent on the outside, where their intelligence told them that PLO offices were hidden. Their intelligence also told them of the huge network of underground PLO storage facilities for arms and munitions that was later uncovered by the Lebanese Army. No doubt the Israelis dropped some bombs hoping to penetrate those facilities and detonate the dumps. The PLO had both artillery and anti-aircraft that were truck mounted. These would fire at the Israelis and then move. Surely Israeli shells sometimes aimed at and missed these trucks, leaving damage but no visible PLO position. Moreover, reporters can make poor judgements, as when Mr. Mallory called the southern coastal highway or the airport not military positions, or when Mr. Reynolds cited too readily the denials of PLO positions in the area of the embassies. Israel soon released reconnaissance photos showing the embassy area honeycombed with tanks, mortars, heavy machine guns, and anti-aircraft positions.

In addition to the work of Messrs. Chancellor, Mudd, and Mallory, instances of exaggerated, slanted, or inaccurate reporting were more frequent on NBC than on either other network. On June 13, Jack Reynolds did a feature story on the camps where Palestinian refugees have lived "since Israel took over Palestine in 1948." The refugees feel "inevitable...anger at the Israelis who pushed them out of Palestine." Mr. Reynolds here parroted

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not the Arab version of the events of 1948, but the version favored only by Arab extremists—and presented it to his viewers as fact.

A Dead Statistic

On June 19, Jessica Savitch reported that "it is now estimated that 600,000 refugees in south Lebanon are without sufficient food or medical supplies." This was a day after news reports that the ICRC—the original source for the figure 600,000—had repudiated it. Earlier in that week Steve Mallory had reported the figures for dead and wounded estimated by the Lebanese government (June 14), as had correspondent Hilary Brown on ABC. (June 15) ABC coupled its report with a denial by the Israeli government. NBC did not; instead it read the figures in a context that implied confirmation of their accuracy. In the first day of the invasion, Miss Savitch had treated casualty figures given out by the PLO in a similar manner. The one person on NBC who appeared to take care to include appropriate qualifiers when citing war statistics was John Chancellor in his commentaries. Perhaps it was NBC's own credulousness toward inflated war statistics that led Jessica Savitch to comment on July 31 that "you've got to wonder what is left in West Beirut to be destroyed." In a similar vein, on August 13, NBC reported that "Shatilla refugee camp...is uninhabitable, completely and methodically destroyed." All the world would have wished that this bit of hyperbole had been true when a month later the inhabitants of Shatilla fell victim to the now infamous massacre.

On June 27 Steve Mallory broadcast a report that the United States and the PLO had agreed on a plan for evacuation of the PLO from Beirut. What stood in the way of a settlement, said Mr. Mallory, was that "the Israelis so far have rejected the compromise." He was here referring to one of the initial PLO plans, but he was wrong on two points. The PLO plan did not clearly provide for PLO evacuation, nor had "the United States...agreed" to the plan as he flatly asserted.

On July 28, NBC's Martin Fletcher reported from southern Lebanon. After reporting, falsely, that "the Israelis invaded Damur last month and destroyed it," Mr. Fletcher proceeded further south to Nabatiye to report on the efforts of Israel's ally, Christian Major Saad Haddad, to win to his side the Moslem Shiites who were also bitterly opposed to the PLO. While belittling Major Haddad and the amount of Moslem support he enjoyed, which

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the camera made appear to be considerable, Mr. Fletcher revealed that "the truth is that Haddad's army...serves Israel's purpose, to police its border and pacify the Lebanese." Saad Haddad's army did indeed serve Israel's purpose, but that was hardly to "pacify the Lebanese." Israel has had no problems with the Lebanese since 1948; its problem has been with the PLO. The point of Israel's support for Major Haddad was to make the Lebanese *less* passive so that they would not allow the PLO to usurp their country to their own and Israel's detriment.

On August 4, Jessica Savitch reported about that day's Israeli bombardment of Beirut, that "Habib was apparently dotting the i's and crossing the t's when the agreement was sidetracked by Israel's attack." (Aug. 4) There must have been a lot of i's and t's because the agreement wasn't concluded for another two weeks. The Israeli bombardments had two contradictory effects: they did at times disrupt negotiations; they also wrung concessions from the PLO that made any agreement possible. The second effect, notwithstanding the questions about the human costs of the bombardment, was clearly more important than the first, but the first was the only one that viewers of NBC would have learned about.

In light of NBC's manifestly strong opinions about the events in Lebanon, it is not surprising that NBC made even a bigger issue out of Israeli censorship than did the other two networks. While CBS and ABC were content to flash on the screen the words "cleared by Israeli censors," NBC used this device and in addition it had its correspondents sign off with the formula, "This is _____, NBC News, with a censored report from _____." This double-barrelled approach went beyond what was needed simply to inform viewers that a report had been submitted to censorship. It seemed rather to be part of a counter-offensive against the Israeli censor. In the first days of fighting, NBC went even further. On June 5, NBC's anchorwoman Jessica Savitch and correspondent Vic Aiken combined to set a record of sorts—accompanying one single news story with *four* separate mentions of Israeli censorship.

Failing Standards of Fairness

U.S. news media coverage of the war and siege in Lebanon fell far below the highest standards of American journalism. Too often it was flawed by inaccuracies, imbalance, and hyperbolic or tendentious reporting. Editorial opinion was almost unanimous in the view that Israel's campaign against the PLO in Lebanon was wrong. Some news outlets, CBS and especially the *New York*

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Times, managed most of the time to restrict these opinions to their editorial sections while striving for objectivity in their news reports. Others, notably NBC and the *Washington Post*, allowed their news coverage to be shaped by their opinions.

When news coverage was shaped by opinions, it tended to exaggerate the destruction wrought by the Israelis, while dwelling at most briefly on that done by the PLO. It tended to portray Prime Minister Begin as an extremist and PLO Chairman Arafat as a moderate. It tended to give credence to the worst possible construction of Israel's goals—naked expansionism—but to refrain from the worst possible construction of the PLO's goals—the annihilation of Israel. Ironically, this was so despite Israel's consistent denial that its goal is expansion and the PLO's refusal to deny that its goal is to destroy Israel. These news reports consistently affirmed the view that the problem of the displaced Palestinians, rather than the Arab refusal to accept Israel, constitutes the heart of the Arab-Israel conflict. They went so far as to affirm the PLO propaganda version of how these Palestinians became displaced—describing this as a product of Israeli aggression rather than of the war the Arabs launched against Israel in 1948.

Why was the prevailing opinion in the news media so critical of Israel, even despite the large number of Jews in the media? Surely many reasons contributed. One was the tremendous propaganda resources employed against Israel. These encompassed both the resources of the Communist world and those of Arab oil and its capitalist allies, resources larger but, in this context, less celebrated than those of the "Jewish lobby."

Anti-Semitism also probably played some role, but it is hard to gauge the relative weight of those who were influenced by prejudice against the Jewish state compared with that of those who feel a special sympathy for Israel.

Israel also did itself a great deal of harm by its tightened censorship practices. This not only prevented Israel's side of the story from being well reported, it also served to make the press suspicious and angry. "What are they trying to hide?" and "they can't do that to us" were two themes that often appeared just beneath the surface of the media's coverage of Israel's actions.

But probably more important than any of these factors was that Israel's actions violated some beliefs very widely held in the American media and other parts of American society. These beliefs may be summarized by the phrases "violence never solves anything" and "why don't you two talk it over?" Their applica-

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tion to Lebanon was made explicit by Meg Greenfield, editorial page editor of the *Washington Post* and columnist for *Newsweek*. Miss Greenfield in the first weeks of the war wrote, "What seems indisputable . . . is that the violence represented failure, no matter which side prevails, that what you must do when it is over is what you should have done long before," (*Newsweek*, June 28, p. 84) namely sit down and talk. Therein was captured the essence of the press' reaction to Israel's action.

In Israel's view it was confronted by an implacable foe with whom no genuine compromise was possible. Israel therefore set out to use force to crush this foe. To many in the media the notion of an implacable foe is hard to conceive. Israel's resort to force was either wicked or shortsighted, because Israel should have worked at negotiating a compromise with the PLO. This conviction accounts for the unanimous conviction early in the war that it would serve to strengthen the hand of Arab radicals and the Soviets, whereas it now appears that the war had the diametrically opposite effect. To be sure, members of the press were moved by their close-up observations of the suffering of civilians, and would have been moved even had they thought the war more justified than they did, but what gave the coverage its special pointedness was the conviction that Israel was fighting with those with whom it should have been talking.

The bias in the press coverage of Lebanon was probably no greater than in that of other situations where the United States or its allies have sought to resolve by use of force conflicts which many in the press felt should be solved by talk and compromise. El Salvador is a recent example, and Vietnam, of course, is the classic one.

It is ironic that the beliefs that violence solves nothing and that all disputes should be settled by negotiation should have become ascendent under the impact of the war in Vietnam, for that war offered living proof that these two tenets are noble wishes, not realistic descriptions of how the world works. In Vietnam, the American urge to talk things over proved a fatal delusion. Compromise was simply of no interest to the communists. Negotiations served them merely as an adjunct to the use of violence. And in the end of that war, violence solved everything—to the satisfaction of the communists.

A Vietnam Legacy

Shibboleths about the efficiency of violence and of negotiations were not the only misperceived "lessons" of Vietnam to haunt

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the news coverage of Lebanon. To explain why the prevailing opinion in the news media was sharply critical of Israel leaves the still larger question of why reputable news organizations and distinguished journalists allowed their opinions to influence their news coverage. To explain this we must look to another set of "lessons" of Vietnam—those having to do with the role of the press.

Many journalists who wrote about the Vietnam war came to feel that it was their duty to show the public that the war was wrong. In the end, the public and most political leaders came to agree, so that the journalists who had worked to persuade the country of that judgment felt vindicated. This experience gave new salience to an old concept of journalism, according to which journalists should not merely report a series of disjointed facts, but should give their audience an idea of how the facts fit together. It is the pattern of facts, the underlying story, that is most important.

This concept was carried to its absurd extreme by the *Washington Post* editor, Ben Bradlee, in his response to the Janet Cooke scandal. When Miss Cooke confessed to having invented "Jimmy," an eight-year-old drug addict who was the subject of her award-winning series, Mr. Bradlee was quoted as saying that he still believed there was such a boy as Jimmy somewhere out there in the urban jungle. Miss Cooke, one might infer, had been the author not so much of a fraud, as of a docudrama. She had captured the big picture even if she had erred on the facts.

Mr. Bradlee's remark reflects one other effect that the Vietnam (and Watergate) episodes had on American journalism: It bred a profound sense of self-satisfaction. In his recent paean to the press coverage of Lebanon, Roger Morris wrote that "the legacy of the Vietnam conflict helped to produce . . . a plain determination [on the part of journalists] not to be taken in, to question official claims on all sides." (*Columbia Journalism Review*, November–December 1982, p. 33). But if Vietnam served to hone the critical sense with which the press scrutinized the rest of the world, it seemed to have the inverse effect on the news media's powers of self-examination. When the press' own performance is at issue, too often critical scrutiny seems to give way to complacency and aversion to admitting error.

So it is with the coverage of Lebanon. The press corrected very few of its own inaccuracies, and most of its exercises in self-evaluation yielded positive judgment. The *Washington Post* ran two guest columns neatly boxed together criticizing its coverage of Lebanon. One accused the *Post* of a pro-PLO bias and the other ac-

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cused it of anti-Arab bias. The *Post*'s message was clear: if it was being criticized by both sides, it must be on target. Never mind that the former column contained a list of particulars, while the latter was all vagueness. The *Columbia Journalism Review*, that watchdog of the press, commissioned a report on the coverage of Lebanon that found it to be fair, accurate, and balanced. "For performance under fire, readers and viewers could have asked for little more," it said. (*Ibid*, p. 33)

Time devoted a half-page box to weighing charges that press coverage was slanted against Israel, and it concluded with characteristic editorial straightforwardness: "Israel's real problem was neither the bias of correspondents nor poor propaganda packaging, but something far more serious: the lack of a readily convincing justification for the onslaught on West Beirut." (Aug. 23, p. 32)

In this self-exculpation, *Time* explained more than it realized. The press did indeed fail to find convincing justification for Israel's action in Lebanon. And this was the message that it conveyed to its audience not only in editorials, but over and again in the way it reported the news. Israel's lack of justification was the "big picture" that much of the press strove to capture in Lebanon, and too often standards of accuracy, balance, and objectivity were discarded in its favor.

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Over There

Conversation with Pik Botha

This interview with the Honorable R. F. Botha, South African Minister of Foreign Affairs and Information, was conducted for Policy Review *by Dr. Ian Butterfield of The Heritage Foundation, who contributes this introduction.*

It would be a gross understatement to say that South Africa currently is going through a "difficult period." The controversy surrounding a Namibia settlement, a potential government of the South-West Africa People's Organization (SWAPO) in Windhoek, and South Africa's own projected racial reforms have combined to divide the ruling white minority in a truly unprecedented fashion.

The National Party prime minister, P. W. Botha, has proposed to enfranchise South Africa's 800,000 Asians and 3.5 million "coloreds" (people of mixed race). These new voters are then to be represented in separate houses of a tricameral parliament. The proposals are, to say the least, modest, particularly since they make no mention of the country's 18 million black majority. However, the white electorate's reaction to the proposals has been severe. Dr. Andries Treurnicht, a leading opponent of racial reform, then head of the National Party's powerful Transvaal Provincial Congress, was dismissed from the party after confronting the prime minister on the reform issue. He and fifteen colleagues have since formed the antireform Conservative Party, with considerable popular backing, particularly in the republic's premier province, the Transvaal. At an August by-election in Germiston, a suburb of Johannesburg, the Conservatives and the far right Herstigte Nasional Partei polled a large joint majority. The National Party candidate was returned only because of the split in the antireform vote and, even then, he defeated his Conservative rival by fewer than three hundred votes. The showing at Germiston added a great deal to Dr. Treurnicht's credibility and, in a sense, the by-election can be marked down as a Conservative victory. Many National Party MPs are now sitting somewhat uneasily in their seats, awaiting the outcome of pending by-elections at Walvis Bay in South-West Africa, Stellenbosch in the Cape Prov-

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ince, and Parys in the Orange Free State. Conservative victories in any of these seats or even narrow National Party victories will probably result in some serious defections from the government to Dr. Treurnicht. Clearly, South Africa is in the throes of a political crisis from which it will not speedily recover, one which will color every aspect of its domestic and foreign policies.

Within the context of the Namibia negotiations, it should be remembered that this interview took place in early September, when the outlook for a settlement appeared much brighter than it does now. The MPLA (Popular Movement for the Liberation of Angola) regime in Luanda now appears adamant in its refusal to link, formally or informally, the exit of Cuban troops from Angola with a Namibia settlement. The MPLA's foreign minister, Paolo Jorge, has stated publicly that his government will consider a Cuban withdrawal only after South African forces have left Namibia. Since Cuban forces are in Angola to defend the country from South African incursions, he states, their presence will no longer be necessary once the republic's troops are no longer stationed in Namibia. However, the actual purpose of the Cuban presence is to defend the MPLA from a large segment of its own people, led by Dr. Jonas Savimbi and UNITA (National Union for the Complete Independence of Angola). Since the UNITA threat will not disappear with a Namibia settlement, it is difficult to see *how* the MPLA will ever be able to order the Cubans home. The MPLA's demands to be trusted, that the contact group accept its verbal assurances as to the ultimate fate of the Cubans, must be taken with a pinch of salt since the entire Angolan problem derives from the MPLA's deliberate breaking of an interim independence settlement, which it had signed with Angola's other independence movements under the aegis of the departing Portuguese authorities.

The United Nations also will continue to suffer from a lack of credibility in this context, since its recognition of SWAPO as the legitimate government of Namibia, despite the organization's refusal to participate in previous elections, leaves it open to charges of bias from Pretoria. Perhaps we should look for a continued South African presence in Namibia for some time, or at least for an independent Namibia without a SWAPO political party. The foreign minister's comments on this subject are particularly enlightening.

Q. Several U.S. commentators on African affairs have asserted that the United States should supply economic aid to all African states, particularly those with left-wing governments or inclinations. Supposedly, such a policy

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will draw these states away from the Soviet Union by demonstrating the economic benefits of cooperation with the West. Would you like to comment on this?

A. U.S. economic aid simply cannot do that much in Africa. A large part of Africa is simply dying, and unless the economic and social decline is reversed soon, the destiny of the people will have been permanently condemned to a state of deprivation and hopelessness. Foreign assistance at present levels will prove inadequate to rectify conditions, but even if the amount of foreign assistance could be increased twofold, the question remains whether that alone could ameliorate Africa's developmental dilemma. The OECD [Organization for Economic Cooperation and Development] countries disbursed $6.9 billion in Africa in 1980, but the OECD reported in 1981 that "in Africa the average productivity of investment and of aid has been lower than elsewhere." The World Bank report of 1980 on sub-Saharan Africa proclaimed that per capita GNP will continue to decline in most parts of Africa in the absence of extensive changes in African governments' policies and increased aid amounting to double the current $6.9 billion per annum.

Compare the above figures with the Soviet Union's contributions to development. In 1980 the Soviet Union disbursed only $350 million in the entire Third World, a mere fraction compared to the OECD. But still, in the U.N., the Soviet Union commands the votes of a very large number, if not the majority of Third World states, so where is the evidence that aid has impact upon political loyalties?

Q. Do you believe that the Soviet Union is following a grand strategy in Africa?

A. I believe that the Soviet Union decided years ago that it was not going to enter the African scene in order to make large disbursements of development aid. First, because the Soviet Union, due to its own economic problems, does not have much in the way of technological aid or development assistance to offer the Third World as a whole and Africa in particular. Secondly, the Soviet Union appears to have a much better appreciation than the West of Africa's fundamental development problems. The continent suffers from serious infrastructural problems in its water supply, energy supply, medical services, food production, transport, and communication systems, all that basic infrastructure which forms the basis of economic takeoff and development. The Soviets identified the immensity of the problem and decided not to try to rival

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the West in facing the awesome problem. Instead, Moscow selected certain strategic points, localities, regions in Africa, determining to force its influence into those areas, to ally itself with the governments to those areas, and to maintain them by military force.

There has never been an election in Mozambique, nor has there been one in Angola. The governments of those countries refuse to test the wishes of their people; they allow no free press. Everyone knows this, every American knows it, no matter how liberal he or she may be. However, it does not bother them, and this is the problem. It is a classic example of selective morality.

Q. Do you believe that this perceived Soviet strategy ultimately is directed against the Republic of South Africa itself?

A. There is no question that we in South Africa are the ultimate Soviet target. I do not believe that anyone in his right mind, or at least anyone with a minimal knowledge of international affairs, can doubt it. We have the direct, categoric statements of the Soviet leadership to the effect that they mean to control the fossil fuel resources of the Middle East and the mineral resources of southern Africa. They have stated this openly. This is what makes it so difficult for us in South Africa to understand certain elements in the United States who accuse us of exaggerating the Soviet threat.

The Soviet leadership has never been unclear as to its intentions, which have been stated in words or performed in deeds. They have entered Afghanistan, and they have kept it. They have crushed the Polish free trade union movement. Soviet assertiveness in these matters has enabled Moscow to pose as the champion of the Third World, because the developing nations side with winners, not with losers, particularly in Africa.

It is ironic that the Soviets have been able to pursue this policy while remaining dependent upon the West for technological and financial assistance for projects such as the Yamal pipeline. It is truly ironic that the Soviet Union receives billions of dollars in credits to pursue and further its aims while this country, a friend of the West, is threatened with sanctions. We still do not have access to Ex-Im bank credit facilities which we could apply directly for the benefit of our black population, generating more capital, more jobs, and more skills.

To be sure, the Soviet Union is not immune from problems of its own. Moscow faces growing unrest among its satellites and a confused situation in its southern provinces. I am hopeful that developing problems within the Soviet empire will make future African adventures less attractive, but I am also aware that gov-

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ernments and men unable to cope with problems close to home often find it attractive to promote discord elsewhere in the hope that attention can be diverted from domestic discontent and grievances.
Q. In the light of this perceived strategy, this thrust towards the republic itself, do you think that the U.S. negotiators can reasonably hope for success in securing a Cuban exit from Angola? If your analysis of Soviet intentions is correct, a Cuban exit from Angola, at a time when Mozambique, the Soviet Union's other major ally, is looking increasingly insecure, would entail the downfall of an entire Soviet grand strategy. Can we be optimistic under such foreboding circumstances?
A. This is a very difficult question. If I may, let me answer your question by looking at events elsewhere since World War II. I am not aware of a single instance where the Soviet Union actually withdrew its forces after entering an area, or agreed that its surrogate forces should withdraw. Apparently, this is a Soviet characteristic. They simply do not leave unless their ventures are met directly by elementary military force. Apparently, force is the only thing for which they have respect. On this basis, one would be inclined to say that, with Soviet prestige at stake, it will prove extremely difficult to effect the withdrawal of Cuban troops from Angola.

On the other hand, if the Front Line states, or the OAU [Organization of African Unity], or leading African states such as Nigeria and Kenya were to decide that all foreign troops should withdraw from Africa, and if pressure to that end were exerted on the Soviet Union through international organizations, then there is a chance of success. I believe that the representatives of the United States are hoping and working on this basis, searching for a general African consensus that the Cubans have no place in Africa.

Basically, the Cubans are here only to cause mischief. After all, what have they done for Angola? The country finds itself in dire straits. Famine is rife in large areas. Were it not for the oil in Cabinda, Angola probably could not have survived economically thus far. The agricultural situation is very poor; there is no food in the shops. Roads and bridges are in need of major repairs. Thus, Angola is in a desperate situation, and the Cubans do not appear ready to help the country. Consequently, the MPLA might just be tempted to please the U.S. government on this score, in the hope of improving its relations with the U.S. and obtaining large scale financial assistance.

The U.S. must formulate its own policy, but I would like to

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sound a note of warning here. The above policy will not work. I am quite convinced of it because the order of assistance that will be required to save Angola simply cannot be put together in the U.S. I want to be very blunt about this. The order of assistance which Angola would require at this stage is simply too large.

Q. Do you believe that the MPLA is master of its own destiny, that it can order the Cubans out of Angola if it chooses to do so, or do you believe that it is under partial or complete control from Moscow or Havana?

A. In all fairness, I believe that the MPLA would *like* to be more independent of Moscow, but it is not.

Q. How did the linkage of the Cuban withdrawal from Angola with a South African withdrawal from Namibia ever become such an important issue in the negotiations? Some commentators in the U.S. had supported the issue of linkage, but South Africa did not appear to be pursuing it very vigorously in the negotiations which took place under the Carter administration.

A. The Cuban issue has always been there dormantly, quietly, like the sword of Damocles hanging over the successful implementation of any settlement plan. Let me put it this way: free and fair elections for South-West Africa are crucial basic elements in any settlement plan. Free and fair elections must take place before the territory can gain independence. Everyone is agreed on this, even within the United Nations. Disagreement focuses on the interpretation of "free and fair elections."

SWAPO and the Front Line states say that there cannot be free and fair elections until the South African military presence is reduced. When we started this round of negotiations in 1977, I put this question to the representatives of the contact group: "Why would you wish our forces to leave the Territory? Whatever you think, you at least must admit that they provide security, and security is essential if the hearts of the voters are to be at rest." We were then told that we could keep our forces in the territory, but that the United Nations would wish to have monitors there, to check that our troops did not exert undue influence or intimidation of any form.

The West now has moved from that position as a result, I believe, of pressure from the United Nations and various African states. Now we have been told that our troop presence must be reduced, the remainder restricted to camps and monitored in the camps. Of course, this plan is very much to the liking of SWAPO and the Soviets. Why? Because Mr. Sam Nujoma has the advantage of being able to declare that the General Assembly of the United Nations has decreed that SWAPO is the sole, authentic

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representative of the people of South-West Africa. Hence, with South African troops reduced, restricted to base, and monitored there, he can enter the territory and declare that he has won. This is the way things work in Africa. Americans often fail to grasp the importance of the "strong man image" in this part of the world. If Sam Nujoma enters South-West Africa before elections, with South African forces out of the way and the blue helmets of the United Nations everywhere, this will have a major psychological effect on the minds of the people of South-West Africa. Let us be bluntly honest: under such circumstances, there is no possibility of a free and fair election. This is why the internal parties in South-West Africa have insisted that SWAPO forces must be restricted to base and monitored. But this SWAPO rejected in 1977! We were then branded as the party which was applying delaying tactics, though SWAPO had never accepted being monitored in clear terms. Suddenly, now they accept it.

Q. Why, in your view, has SWAPO recently adopted this more flexible attitude?

A. I believe that this change is a result of pressure from various African states and of U.S. diplomatic efforts. The United States has been working very hard and very sincerely to find a way out of this problem that will not be to the detriment of U.S. interests.

To summarize, it is known that if Cuban forces were not in Angola, UNITA probably would have overrun the MPLA forces some time ago. The Cubans are in Angola to fight this internal Angolan movement, which, before the MPLA broke the ceasefire, was visualized as at least part of a future government in Luanda. However, Cuban troops assisted the MPLA in subverting the electoral process, and UNITA was denied all hope of becoming part of the government because of Cuban interference.

SWAPO also operates under the umbrella of the Cuban military structure. Cuban support makes SWAPO psychologically stronger, encouraging it to increase its forays into the territory, to murder people in the territory, to lay landmines, and generally to intimidate the population. The internal leaders of the Territory, both black and white, have told us, therefore, that there can be no hope of free and fair elections in the Territory if this military structure is allowed to remain on the border. They feel that even if SWAPO loses the election, the Cuban presence will enable it to reject the result and return to fighting.

Eventually, people would become wearied of the fighting and the terror and would vote for SWAPO simply in order to end the

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fighting, not because they supported the party itself. Hence, it seems impossible to hold free elections in Angola while the physical and psychological threat of Cuban troops remains over the northern border.

Q. However, let us suppose that the U.S. were successful in its efforts to get the Cubans out of Angola. How do you visualize the subsequent situation in Angola itself? Does UNITA have the power and the ability to take the government in a relatively short period of time, or do you think that Angola could degenerate into a Chad-type situation, with one party not quite strong enough to take the government and the other not strong enough to hold it and rule effectively?

A. I have very little doubt that Dr. Savimbi enjoys the support of the majority of the people. It is a great pity that elections were not held in Angola in 1975, as planned. In my opinion, such elections would have brought about stability. If Dr. Savimbi had lost, it would have been clearly demonstrated that he did not have the support of the majority, and vice versa if he had won. However, Savimbi is now obliged to fight a foreign presence which seeks to crush his nationalistic movement.

If the Cubans do withdraw from Angola as a result of the recent U.S. initiatives, I believe that the fighting in that country will come to an end one way or the other, or that the MPLA will be obliged to make an accommodation with Dr. Savimbi.

Q. We have spent some time discussing the prospects for Angola, but what of Namibia? What do you believe are the current prospects for achieving Namibian independence, particularly if South Africa is obliged to countenance a SWAPO victory at the polls?

A. The internal leaders of the Territory say they are convinced that SWAPO cannot win a free and fair election. Whether this is the case, I cannot tell. The fact is that the prime minister has stated that South Africa cannot accept any arrangement in the territory which would have the result of subordinating the people of South-West Africa to a Communist controlled force imposed through the barrel of a gun.

Moreover, Walvis Bay belongs to South Africa. Our possession of it is based on internationally recognized treaty. Can you imagine the situation with the Red Flag flying in Windhoek and Walvis Bay, the only deep sea port in the territory? Certainly, Walvis Bay then will be under threat of seizure, so South Africa will be obliged to plan actions which may cause a serious upheaval in southern Africa. However, we have interests here, just as the United States has interests in its part of the world. Look what the United States did when its safety was first threatened from Cuba.

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Look at the way you reacted, protecting your interests within your own hemisphere. You claimed this as a right in your part of the world, and we claim it in ours.

South Africa cannot condone the Red Flag in Windhoek, it simply cannot. It is directly contrary to our interests. We believe that the next country to fall will be Botswana. That will leave right around us to the north, east, and south a stretch of land one thousand to one-and-a-half thousand miles wide, stretching from the Atlantic to the Indian Ocean, either under direct or indirect Communist influence. We have no illusions as to what this will mean for our survival, and we are not going to sit back until it is too late to secure our survival.

Q. How would you describe South Africa's current relations with the independent political parties in South-West Africa? The DTA [Democratic Turnhalle Alliance] has recently made some very critical remarks about both South Africa and the United States, alleging that the two parties are conspiring to betray the various parties now operating in Windhoek in order to achieve a settlement with SWAPO.

A. The internal parties in South-West Africa have reacted in this fashion before. I can understand why they do so, though I cannot accept their reasons for doing so. Their position is, of course, unsure, and has been unsure for a protracted period. Hence, one must have sympathy for their nervousness. However, we are not conspiring. We are simply doing our best to achieve an equitable independence settlement for the territory.

Our continued presence in the territory has brought down a host of condemnatory pronouncements and negative decisions upon South Africa for decades. Now we are doing our best to achieve an independence settlement which will not allow the Red Flag to fly in Windhoek—that we cannot have, as I have already mentioned. But we have bent over backwards, accepting positions and principles which now are costing us a high political price here in South Africa.

Q. Speaking of the political price which the South African government is currently paying—the new Conservative Party and the Herstigte Nasional Partei both appear to be making capital out of the present government's policies on Namibia and domestic racial reform. In the light of this situation, does the government expect to receive significant political and/or economic concessions from Washington in return for its cooperation over Namibia and its advocacy of racial reform?

A. I would not put it that way, but we do expect a realistic appraisal of our situation in this country on the part of the U.S.

The U.S. cannot simply demand of us or ask us to abandon our

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political power base. If we do, who will the U.S. then have to deal with? I do not believe that it is in the interests of this country or of good relations between the various peoples of this country that this government should disappear from the political scene. This is a moderate government, which genuinely wishes to take into account the interests of all South African people and sincerely wishes to move away from negative forms of discrimination.

We are faced, however, with realities and facts which have nothing to do with race or the color of a man's skin. You cannot remove the whites from this country, but even if you could do it tomorrow, do you sincerely believe you could have a one man, one vote unitary state? An integrated political state?

In the U.S., blacks are regarded as blacks. This is a racialistic attitude, ignoring the fact that blacks speak different languages, have different cultures, and experience serious difficulties among themselves. I think it is a racialist attitude to group people together into one amorphous group of human beings simply on the basis of their skin color. The Zulus are Zulus; they speak Zulu, and a child is born Zulu. Thus is not the result of South African government policies, but of genuine cultural identification. The same applies to the Xhosa and any other South African people you care to name, and I invite anyone to check the truth of my statement. Anyone can come to this country, go into our towns and cities and ask any black man, "What are you?" He will not tell you that he is a black man; he will tell you that he is a Xhosa or a Zulu, a member of the society into which he was born and the culture in which he was raised. He is proud of it, and why should he not be? Unless this is understood, there is little hope for the U.S. and South Africa to improve relations.

I can understand that the U.S. is opposed to certain policies and practices which appear to be humiliating and to militate against certain basic and fundamental rights of the individual. This I can understand; I know U.S. society; I lived in it. On the other hand, the U.S. is a relatively homogenous society. The norms and standards of U.S. society are not threatened by any minority group. The majority of people in the U.S. can always exercise a vote to defend these norms and values, which you hold dear and wish to uphold.

It is of no use to tell South Africa that it must change unless you demonstrate how the fundamental values of our society can be preserved, particularly against the background of recent African history. For instance, how can the U.S. ensure the survival of

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democracy and judicial procedure in Zimbabwe, those issues which were agreed upon at Lancaster House? Of course, it cannot.

If the U.S. wishes to dictate the solution for South Africa's problems, it must be prepared to underwrite and guarantee those norms and values which it wishes to see generally applied. However, the U.S. is not prepared to go so far. It will not guarantee to whites in Africa those rights which it guarantees to blacks in America.

This is a great pity, because the U.S. and South Africa must work together for the sake of the African continent as a whole. Most of North and Central Africa sits on the brink of economic disaster. The continent is dying. Southern Africa could yet be saved, but the U.S. cannot do this without us.

Ian Butterfield writes:

While it is always dangerous to overinterpret the outcome of by-elections, the results announced subsequent to this interview suggest a renaissance of support for the National Party and its racial reform proposals. At Walvis Bay, the Nationalists polled 70 percent of the vote. At Stellenbosch the National Party received 7,002 votes, compared to 559 Conservative votes and 1,380 for the liberal Progressive Federal Party. The government did not achieve an overall majority at Parys but, nonetheless, was victorious, polling 5,303 votes against 3,701 for the Conservative Party and 1,592 for the HNP. The PFP hung on to its traditional stronghold in Johannesburg North, but with a greatly reduced majority.

The National Party appears to have lashed out successfully against both its conservative and liberal critics. The new Conservative Party made only one respectable showing—at Parys. Both the PFP and the Conservatives forfeited their deposits at Stellenbosch, and this result, combined with the poor PFP showing at Johannesburg North, suggests that the voting public is becoming suspicious of that party's demand for more radical, immediate reforms as well as of Dr. Treurnicht's inveterate opposition to all reform.

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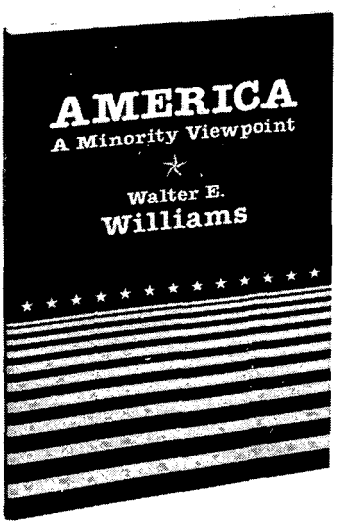

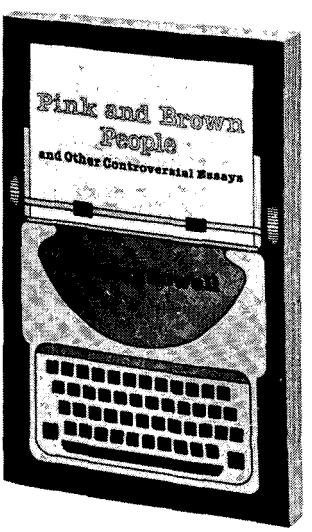

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The Insane Hinckley Verdict

JULES B. GERARD

The insanity defense has existed for centuries. It is an exception to the general rule upon which the criminal law—indeed, upon which the whole legal structure—is founded: namely, that human beings are free to choose their behavior and are responsible for the consequences of the behavior they choose. Long ago—centuries before we had such things as psychiatrists and psychologists—the law (and by "the law" I mean *society*) acknowledged that some people were so deranged that it was morally unjust and ethically unfair to hold them responsible for their crimes. So society devised a test by which to identify those who were so deranged. That test is the insanity defense.

A number of points should be emphasized. First, the insanity defense is a *legal* question, not a medical or psychological question. Second, it is for *society* to say who the people are who are so crazy they should not be held responsible for their violations of society's rules. Deciding to excuse someone from responsibility for transgressing rules that are imposed upon everyone is a matter of transcendent importance, because it is, to repeat, making an exception to the fundamental premise upon which all of society is based. Ultimately it is a question of ethics and morality.

In defining the nature of a thing, it is often helpful to look at what it is not as well as what it is. First, the insanity defense is *not* an attempt to define mental illness. So far as the insanity defense is concerned, psychiatrists and psychologists are free to call any behavior they choose a mental illness.

Second, the insanity defense is *not* an excuse for all defendants who are mentally ill. It does not excuse a defendant from responsibility solely because that defendant has some problems that might be labeled an illness. The insanity defense was formulated in an effort to describe those whom *everyone* would recognize as so crazy it would be unfair to hold them responsible. Recall that the insanity defense existed long before medicine and psychology developed any theories about mental illness.

Third, the insanity defense does *not* excuse those who engage in abnormal behavior. There is no necessary correlation between abnormality and insanity. Crime is by definition an abnormal act.

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One can hardly imagine a democratic society that makes a crime of behavior in which a majority of its members engage. If simple abnormality excused, no one could be prosecuted for violating the criminal law. Thus the fact that the defendant committed the crime is *no* evidence that he was insane, no matter how atrocious was the act with which he is charged. Moreover, there isn't even any necessary correlation between abnormal behavior and "mental illness" as that term is used by mental health professionals. Mountain climbing, hang gliding, skydiving, and volunteering to be a donor in a kidney transplant operation are all abnormal acts, but none of them (or all of them put together) is indicative of mental illness.

To recap briefly: The insanity defense is a *legal* test, not a medical or psychological test. It is not an effort to describe mental illness. It does not excuse everyone who might be labeled mentally ill. It does not excuse everyone who is abnormal.

The major problem is to understand exactly what the relationship is between the medical-psychological concept of *mental illness* and the legal concept of *insanity*. It should be obvious by now that those concepts are *not* identical. But they are related. Understanding this relationship is tricky, and so one is required to pay attention. But it is not especially difficult.

The relationship between *mental illness*, on the one hand, and *insanity*, on the other hand, can be stated quite simply in two propositions:

(1) To be eligible for the insanity defense, the person must be mentally ill.

(2) *BUT*, not everyone who is mentally ill qualifies for the insanity defense.

The first proposition is that a defendant must be mentally ill to qualify for the insanity defense. There can be no doubt about this. Since its earliest beginnings centuries ago, the insanity defense has always focused on mental aberration as the thing that justified excusing the defendant. There is a hidden problem here. The problem is: what do we mean by the word "illness" as that word is used in the insanity defense? My own belief is that what we mean by the word "illness" (or disease, defect, disorder, or any of the other varieties that have been used) is perfectly clear. First, we mean a malfunction of some kind. Everyone assumes that an illness is something going wrong, not something going right. I have no doubt that the insanity defense intended to refer to malfunctions when it adopted the language of "illness" (or disease, or defect,

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or disorder). The trouble is that very few of the things listed as mental illnesses by psychiatrists and psychologists can be shown to be *mal*functions. Most of them, in fact, deal with behaviors that are basically normal, although perhaps exaggerated. Let me draw an analogy to physical medicine. Pregnancy is certainly a medical condition. But it is obviously *not* an illness because the body is functioning normally. And just because health professionals can put a label on the condition—"pregnancy"—does not convert that condition into an illness. Similarly, the fact the psychiatrists and psychologists can put labels on the conditions with which they deal does not mean that society must accept those conditions as illnesses as that term is used in the insanity defense.

Second, we normally—although not universally—think of an illness as something that happens to the person, like being struck by lightning, not something the person brings upon himself. This assumption coincides precisely with what I believe is the common understanding of the proper role of the insanity defense. The insanity defense should not be available to one who brings his troubles upon himself. A drunk or a drug addict should not be excused just because he was intoxicated at the time he committed the crime. Now it obviously is true that people can induce illnesses; smoking can induce lung cancer, which is no less an illness just because it was self-induced. But the point is not whether it is proper for medicine to call the condition an illness. It is whether the insanity defense should be required to recognize it as an illness for purposes of excusing him from responsibility. And that brings us to the second proposition.

Inventing Mental Illness

The second proposition—that not everyone who is mentally ill qualifies for the insanity defense—is the tricky part. It caused very little trouble until the turn of this century. That was because until then the only people society identified as mentally ill were the crazies, outright loonies, who also qualified for the insanity defense. Until about the turn of the century, in other words, the concepts of mental illness and insanity *were* identical. Then Freud and his followers came along with their novel conceits about the workings of the mind and started inventing mental illnesses all over the place; they now number about 400. And that began the divergence between the concept of insanity and the concept of mental illness.

A typical insanity defense statute reads as follows: A defendant

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is not guilty by reason of insanity if "as a result of mental disease or defect, [he] either lacked substantial capacity to conform his conduct to the requirements of the law or lacked substantial capacity to appreciate the wrongfulness of his conduct." By its very terms, the defense is confined to those illnesses which interfere either (1) with the defendant's ability to tell that what he did was wrong, or (2) with the defendant's ability to behave in the way that he knows is right—that is, to control his conduct.

The kinds of mental illnesses that qualify for the insanity defense, therefore, are those that have these three necessary characteristics:

(1) They are caused by a *mal*function of the mind; only those illnesses qualify for which there is evidence that makes it reasonable to suppose that there is something really wrong inside the person.

(2) They are not brought on by the individual's own free choice; they are something that happened to the defendant, not something the defendant himself induced. And

(3) There must be evidence that makes it reasonable to suppose that the illness *characteristically* interferes either with the person's ability to tell what is right, or his ability to do what is right.

As limited in this way, there are only four mental illnesses—four out of about 400—that should make the person eligible for an insanity defense. These illnesses are: (1) schizophrenia; (2) the affective disorders (mania and depression); (3) mental retardation ; and (4) chronic brain syndrome (senile dementia; senility; Alzheimer's disease). These are the only four mental illnesses about which there is enough reliable evidence to make it reasonable to suppose that they meet the three criteria.

Note that these illnesses make the defendant *eligible for* the insanity defense. The presence of any of these four illnesses should not automatically excuse. Suppose, for example, a paranoid schizophrenic has a delusion that his wife is trying to kill him. Suppose further that he holds up a liquor store in order to get money to buy himself a new color television. Should he be excused? Of course not! His illness had no connection whatsoever to his crime.

Two more points need to be recapped before turning to the Hinckley case. Insanity is a *legal* concept, not a medical or psychological one, and it is for *society* to decide who should be excused and who should not. If the mental health professionals are permitted to testify about illnesses that do not meet the three criteria of the in-

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sanity defense mentioned earlier, then it is the mental health professionals, and not society, who are deciding whom to excuse. If the mental health professionals are permitted to decide which illnesses qualify and which do not, then society will, in fact, have delegated to these professionals the power to decide which defendants to hold responsible and which defendants to excuse. And society will have had no voice in the selection of these so-called "experts," and no way to hold them accountable for their decisions.

Who Defines Insanity?

Even if society specifies which illnesses qualify for the insanity defense, mental health professionals still have all of the power if they are allowed to use the labels anyway they see fit. The mental health professionals still usurp society's right to decide these matters, in other words if so-called experts are permitted to call anybody schizophrenic that they want to, whether or not the defendant has the symptoms that identify the illness of schizophrenia. The easiest illustration is retardation. Suppose the expert testifies that the defendant is profoundy retarded, even though the expert admits he has not administered an IQ test, or any other device by which retardation is normally discovered. The essence of what would be happening, in other words, is that the expert is testifying, "This person is retarded because I say so, and I am the expert."

Thus, if society is to retain control over the insanity defense, as I believe it should, society will have to insist that limits be placed not only on the illnesses that make a person eligible for the defense, but also upon the kinds of testimony that are permitted to prove the defendant suffers from one of those illnesses.

The first problem with the Hinckley case is that no such limit was imposed on the expert testimony. In this respect, Federal District Judge Barrington D. Parker did what all judges do: he permitted the experts to say anything that came into their minds.

The contention was that John Hinckley was schizophrenic, which *is* one of the illnesses that qualify for the insanity defense. But the fact is that he had *none* of the symptoms of that illness that are required to make such a diagnosis. He did not suffer from hallucinations, or delusions; nor did he manifest any of the other classical symptoms of that disorder. These symptoms are those listed in what is called the *Diagnostic and Statistical Manual*, a manual published by the American Psychiatric Association. It is a manual that reflects a consensus of *all* mental health professionals about the symptoms that should be required to make a diagnosis when the

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professionals want to be as certain as they can be that the diagnosis is correct. Deciding to excuse a person from responsibility for his criminal act is of such overriding importance to society that society is entitled to insist that the diagnosis be as certain as possible. It is entitled to insist, in other words, that the *DSM* criteria be met before a diagnosis is permitted to be introduced into evidence for the consideration of the jury.

This is not to say that Mr. Hinckley was normal. Of course, he is not normal. But no one who deliberately commits a criminal act is normal. To repeat, the insanity defense was not intended to excuse abnormal people. It was intended to excuse only those who are *so* abnormal because of some internal *mal*function that it is morally and ethically unjust to hold them responsible. And that quite obviously does *not* describe Mr. Hinckley.

Many people are abnormal. The hero is abnormal. The eccentric is abnormal. Even a college graduate is abnormal. Mr. Hinckley clearly is abnormal. But that doesn't prove he had an "illness" or "disease" as that concept is understood by society. And it is society's understanding of the meaning of the word that is incorporated in the insanity defense, not the labels of the mental health professionals.

'Sane' Beyond a Reasonable Doubt

The second thing wrong with the Hinckley case was Judge Parker's instruction on the burden of proof. He required the prosecution to prove that Mr. Hinckley was *sane* beyond a reasonable doubt. The first problem is that that burden of proof is simply impossible to meet. Insanity is a moral and ethical question. No moral or ethical question can be proved beyond a reasonable doubt. Even if one equates "insanity" with "mental illness"—an equation which I have been at some pains to try to demonstrate is improper—the task remains impossible. Nobody could prove that any of us are not "mentally ill" beyond a reasonable doubt.

More important, however, is the fact that this instruction was in flat violation of the law. A federal statute imposed the burden on the defendant to prove by a preponderance of the evidence that he was insane. That statute had explicitly been held applicable to cases like Mr. Hinckley's by the D.C. Court of Appeals—the court superior to Judge Parker's, the one whose rulings he is supposed to follow—less than three months before the Hinckley trial.

Not only that, but the Supreme Court of the United States has at least twice specifically upheld the constitutionality of imposing

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the burden of proof upon the defendant to prove insanity, most recently less than ten years ago. There is absolutely no excuse for Judge Parker's deliberate and willful violation of the law in giving this instruction. Nor was there a legitimate reason for him to impose the burden upon the prosecution, especially the "beyond a reasonable doubt" burden.

The third thing wrong with the Hinckley trial is another instruction Judge Parker gave the jury. In this instruction, he told the jury that if they acquitted Mr. Hinckley by reason of insanity, Mr. Hinckley would be committed to a mental institution and would be held there until he could prove either that he was no longer mentally ill or that he was no longer dangerous.

Now the curious thing is that in this instruction, Judge Parker was following the letter of the same law he had violated in the first instruction. But the difference is that the D.C. Court of Appeals, the same appellate court which had ruled that the burden of proof part of the statute (which Judge Parker ignored) was applicable, had, in that same decision, ruled that this part of the statute was *un*constitutional. In other words, Judge Parker ignored the part of the statute that had been upheld, but instructed the jury in accordance with that part of the statute that had been held unconstitutional!

The problem with the part of the statute dealing with mandatory commitment goes back a long way in the District of Columbia. Beginning in the 1960s, the D. C. Court of Appeals has suggested that it was unconstitutional to require mandatory commitment of those acquitted by reason of insanity. And some other courts have followed that suggestion.

The courts that have held these mandatory commitment statutes unconstitutional have ruled that a defendant acquitted by reason of insanity must be treated the same as people who are involuntarily committed under the civil process. The civil process requires that the person seeking commitment—in Mr. Hinckley's case, that would be the government—must prove (1) by clear and convincing evidence (which is a standard between the mere preponderance of the evidence, on the one hand, and the beyond a reasonable doubt standard, on the other hand) (2) that the defendant is both (a) mentally ill and (b) dangerous to himself or others. The ridiculous bottom line in such cases is this: the government must bear the burden of proving the defendant sane beyond a reasonable doubt in the criminal case; but if it fails, it then must turn around and bear the burden of proving by clear and convincing

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evidence that the defendant is both mentally ill and dangerous in the civil proceeding, in order to have the defendant committed.

The point is that the mandatory commitment part of the statute had been held unconstitutional by the appellate court within three months of Judge Parker's instruction in the Hinckley case. Moreover, there was substantial doubt about its constitutionality in the District of Columbia even before that recent court of appeals decision. Again, there was no excuse for Judge Parker to give this instruction, although one may concede—because he was, at least, complying with the statute in this instance—that this is a closer question than the first instruction.

Did these instructions influence the jury's verdict? I don't know. A few studies have found, however, that jurors are influenced by such instructions. If the jurors really believe the defendant will be confined either way, then they are not likely to see any significant difference between finding him guilty and finding him not guilty by reason of insanity.

What will happen to Mr. Hinckley? Given the unprincipled behavior of courts today, it is always risky to make predictions. But *if* the D.C. courts follow the precedents they have established in the past, then what will happen is predictable. First the court will hold that the mandatory commitment part of the statute is unconstitutional. Then it will hold that Mr. Hinckley cannot be committed except under the civil process. To commit him civilly, the government will have to prove by clear and convincing evidence that Mr. Hinckley is now mentally ill. The government will not be able to meet that burden—after all, Mr. Hinckley can call the expert witnesses who testified for the government in the criminal trial—and he will walk away a free man. This is not a prediction, but it is what will happen *if* the D.C. courts follow the precedents they have established in the past, *unless* the United States Supreme Court overrules those earlier D.C. precedents.

Reforming the Insanity Defense

What can be done about such idiocy?

First, to the extent the problems in the Hinckley case result from willful federal judges who make social policy in defiance of the rules laid down by the democratically elected legislatures and make social policy that has no foundation in the language, structure, or history of the Constitution, we confront the problem of what has been called "The Imperial Judiciary."

What excuse did Judge Parker offer for his actions? Only that

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he did not want to be reversed on appeal. Normally there is nothing wrong with that. Trial judges ought to try to follow the law so as to avoid being reversed by appellate courts. But note that Judge Parker was not *following* the law, he was violating it. His excuse was that *if* Mr. Hinckley were convicted, Mr. Hinckley would have nothing to complain about because Judge Parker had always ruled in his favor. Well, Judge Parker won't be reversed. But not because he followed the law. He won't be reversed because the government cannot appeal an acquittal.

Second, judges always have had the power to put limits on the kinds of illnesses that qualify for the insanity defense and to put limits on the testimony of the so-called experts. Suppose, for example, that an expert witness testifies in the Hyatt Regency disaster case that the skywalks were improperly constructed but fails to offer any scientific evidence (for example, that they were improperly designed, or used the wrong size I-beams, or used the wrong kinds of steel) to support his conclusion. He testifies, in other words, that the skywalks were improperly constructed "because I say so and I am the expert." No court would permit such testimony. And yet that is the kind of thing the so-called mental health experts have been getting away with for years.

Judges have had the power but have not used it. So it is time for the legislatures to intervene, first by explicitly limiting the kinds of illnesses that qualify for the insanity defense, and secondly by excluding expert testimony about those illnesses unless that testimony demonstrates that the defendant manifests all of the symptoms required for the proffered diagnosis by the *DSM*.

Third, all of the laws should require the defendant to bear the burden of proving his insanity by at least a preponderance of the evidence. Missouri and most other states do so at present. The law in the federal courts and the other states should be changed. There is no doubt this would be constitutional.

Fourth, all laws should require mandatory commitment after a verdict of not guilty by reason of insanity. Some courts have held such laws unconstitutional, but some have sustained them. My own opinion is that the decisions invalidating such laws are utterly unpersuasive—wrong because they misconceive the nature of mental illness (wrong as a matter of fact, in other words), and wrong as a matter of constitutional law. As an alternative to requiring mandatory committment, state laws should be redrafted to make certain that no one can be found not guilty by reason of insanity who is not also committable under the involuntary civil process.

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Fifth, guilty but insane *as it currently is used* should be rejected. Those states that have it *add* it to the insanity defense. And it has caused nothing but trouble in those states. The reason is simple: how do you describe to the jury the difference between not guilty by reason of insanity on the one hand, and guilty but insane, on the other? When should it find the one rather than the other? None of the current statutes answers that question, and there may well be no difference between them. All this does is add another confusion factor to the trial. Instead of three possible verdicts (guilty, not guilty, and not guilty by reason of insanity) the jury now has four possible verdicts. All defense lawyers love confusion. It increases the chances of misunderstanding by the jurors. What we must do is simplify, not complicate matters further.

Conclusion

Some critics argue that it is undesirable to tamper with the insanity defense "solely" because of the Hinckley verdict. These critics are mistaken. Mr. Hinckley may have been the straw that broke the camel's back, but it was not by a long shot the only straw on the camel. Major articles about society's discontent with the insanity defense were appearing in popular magazines long before Mr. Hinckley attempted to kill the president. Society's discontent is not, as these critics would have it, a new phenomenon.

The Hinckley trial did have one major effect, however, It demonstrated the futility of relying upon judges to make sensible reforms in the administration of the insanity defense by exercising their traditional powers over the testimony of expert witnesses. It demonstrated that legislative intervention is imperative if society is to regain its rightful power of determining who should be found not guilty by reason of insanity.

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Crime, Bureaucracy, And Equality

CHRISTIE DAVIES

Crime is one of America's most serious social problems. Crime rates and particularly rates of serious crime, such as homicide, robbery, rape, and other crimes involving violence, have risen to high and unacceptable levels. The gravity of the problem is only underlined by the eagerness with which the small recent easing of crime rates due to the recession and the diminishing proportion of young people in the population has been greeted. Overall, however, American criminologists and crime policy-makers are pessimistic about the possibility of combating crime; their work abounds with dismal phrases such as "nothing works" or "society must learn to live with high crime rates." This pessimism stems from the fact that most policy-makers looking at the question of crime have concentrated their attention exclusively on what has happened in America itself. When American criminologists have looked at Europe, they have in general noted only that crime rates in Europe tend to be much lower than in America but are rising. And they have not been able to draw sensible conclusions from either of these facts. What is needed is a careful, comparative assessment of how crime rates differ between various European countries and how they vary over time. Such an assessment would give those concerned with making American policy new ways of thinking about the causes and cure of crime. Perhaps the best place to look is at Britain, the European country that most resembles America in its legal and political traditions.

During the last fifty years, Britain has changed from being a relatively crime-free society to one in which serious crimes of violence and dishonesty occur on such a scale as to constitute a significant social problem.[1] The situation has been well summed up by Leon Radzinowicz and Joan King: "In 1900, the police of England and Wales recorded under a hundred thousand crimes, less

1. The fact that crime does constitute a real problem in Britain and is perceived as such by ordinary people on the basis of their everyday experience is well outlined in: Patricia Morgan, *Delinquent Fantasies* (Temple Smith, London, 1978). See also, Charles Moore, *The Old People of Lambeth*, Salisbury Paper 9, (The Salisbury Group, London, 1982).

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than three for every thousand people. In 1974, it was almost four for every hundred people. That is, over thirteen times as many. And those are indictable offences, not minor infractions.''[2] By the beginning of the 1980s, the number of serious offenses recorded by the police was even greater and was of the order of two and a half million offenses (i.e. about five for every hundred people).[3] These figures give a very rough idea of a major and unpleasant social change that has overtaken Great Britain in the course of the twentieth century.

Some of the increase in recorded serious crime may of course be statistical rather than real. People may, for example, be more willing to report crimes to the police than they were in the past—possibly a result of increasingly easier access to telephones. Additionally, the police may have improved their procedures for recording such complaints. As more people take out insurance policies against burglary, so, too, they are more likely to report such crimes to the police because otherwise they cannot claim the insurance money.[4] Explanations of this kind cannot, however, account for more than a tiny fraction of the enormous increase in serious violent and acquisitive crimes known to the police. The recorded increase in personal violence, robbery, burglary, and other serious offenses reflects a very large real increase in the incidence of these crimes.[5] In consequence, the ordinary British citizen is more likely to become the victim of violence or dishonesty than he or she was in the past.

If we are to seek effective policies to halt and reverse the increase in crime that has plagued modern Britain and which is an even greater problem in contemporary America, it will prove helpful and perhaps necessary to try and explain why the increase has taken place. A knowledge of the causes of crime may not, in

2. Sir Leon Radzinowicz and Joan King, *The Growth of Crime, the International Experience* (Hamish Hamilton, London, 1977), pp. 3-4.

3. Home Office, ''Criminal Statistics England and Wales'' 1979 and 1980, *Cmnd. 8376* (HMSO, London, 1980 and 1981). The figures for 1980 are not strictly comparable to those for earlier years, but they give an idea of the order of magnitude of the problem.

4. ''Criminal Statistics England and Wales,'' 1980, *op. cit.*, p. 28 for a discussion of this problem where it is concluded that ''in general changes in recording patterns seem likely to be slow.''

5. Radzinowicz and King, *op. cit.*, pp. 6-7; F. K. McClintock and N. Howard Avison, *Crime in England and Wales* (Heinemann, London, 1968), pp. 22-27; Morgan, pp. 21-23; Moore, *op. cit.*, pp. 6-7. For some interesting indirect evidence: Rob Mawby, *Policing the City* (Saxon House, Farnborough, Hants, U.K., 1979).

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itself, enable us to devise a policy for dealing with the problem,[6] but it can demonstrate that certain popular leftist panaceas are irrelevant and unlikely to work, and it can provide a framework within which policies can be discussed and implemented. Any policy-maker, whether British or American, who fails to look at the historical and comparative evidence regarding the growth of crime is likely to come up with policy suggestions that are at best incomplete and unconvincing.

The Decline of Traditional 'Causes' of Crime

The most striking lesson to be learned from Britain's qualitative lurch from a crime-free to a relatively crime-ridden society is that in modern societies criminal behavior, taken as a whole, is *not* rooted in poverty, in bad living conditions, or in social inequality.[7] It is, of course, possible that these factors do act as causes in individual cases, but since they have all markedly declined in Britain during the twentieth century, it is difficult to see how they can be used to explain the steady rise in crime that has taken place. In 1900 or 1930, there was far more poverty, far more slums, far greater social inequality than there is in Britain today; *but there was also far less crime.* Swedish society has experienced an even greater transformation by affluence, welfare, and state enforced egalitarianism than Britain; but Swedish crime rates have also risen remarkably in recent years.[8] Thus, in 1955 only 225,000 offenses against the Swedish penal code were known to the Swedish police, but by 1979, the corresponding figure was nearly 700,000.[9] The implication of this is that policies that aim to reduce crime by improving welfare or living conditions or by promoting greater social and economic equality are unlikely to succeed in contemporary industrial societies. During the current period of economic difficulties that afflicts Britain, western Europe, and the United States alike, these traditional left-wing theories regarding the socio-

6. I am not as pessimistic as James Q. Wilson about the possibility of sociological or criminological analysis being able to provide policy suggestions that can be implemented. James Q. Wilson, *Thinking About Crime* (Basic Books, New York, 1975), pp. 43–63. His criticism that these disciplines derive "from an intellectual paradigm that draws attention to those features of social life least accessible to policy intervention" (p. 60) is shrewd but too sweeping.

7. Wilson, *op. cit.*, Marshall B. Clinard, *Cities with Little Crime: The Case of Switzerland* (Cambridge University Press, Cambridge, 1978), p. 155.

8. Roland Huntford, *The New Totalitarians* (Allen Lane, London, 1975), p. 343; Clinard, *op. cit.*, p. 152.

9. *Statistik Arsbok for Sverige 1960, 1970, and 1980.* Statistika Centralbyran, Stockholm 1960, 1970, and 1980.

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economic causes of crime and, hence, the appropriate policies to be pursued, may well become fashionable again.[10] But the evidence from Europe's affluent (and not so affluent) recent past is solidly against them.

Some different and more positive insights into the relationship between crime and society can be gained by looking at the trend of British crime before 1900 and at the historic changes in the incidence of noncriminal forms of misbehavior such as illegitimacy in Britain and other societies. British rates of recorded crime in the latter part of the nineteenth century *fell* almost as steeply as they have risen in the middle of the twentieth century.[11] When we take into account the steady improvement in the efficiency of Britain's nineteenth-century police forces in recording and dealing with crime of all kinds, it seems probable that the real fall in the incidence of both minor and serious crimes was even more spectacular than that shown by the statistics.[12] Britain in 1900 was not only a much less violent and dishonest society than it is today, but it was also a much less violent and dishonest country than it had been in the middle of the nineteenth century. Indeed, the overall rate of serious offenses recorded by the police in the 1890s was only about 60 percent of what it had been in the 1850s.[13] The successful reduction of previously high levels of crime and violence and the creation of a secure, well-policed society was one of the great achievements of Victorian Britain. It is an achievement which later generations have carelessly thrown away; but, if we can achieve an understanding of the factors that underlay this achievement, there is no fundamental reason why it should not be repeated in Britain or in America.

Crime in Britain seems to have followed a rough U-curve over time with a period of steadily falling crime from 1850 to 1890; a period of relatively low, stable rates of crime from 1890 to about 1935; and since then, a period of rapidly increasing crime rates. A simi-

10. A sophisticated version of these views, which is nonetheless entirely circular in its arguments; John E. Conklin, *Robbery and the Criminal Justice System* (J. B. Lippincott, Philadelphia, 1972), pp. 29, 181, 188.

11. Ted Robert Gurr, et. al., *Rogues, Rebels and Reformers* (Sage, Beverly Hills, 1976), pp. 37-39, 43-45, 60-61; V.A.C. Gatrell and T. B. Hadden, "Criminal statistics and their interpretation" in E. A. Wrigley, ed. *Nineteenth Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge University Press, Cambridge, 1972), pp. 374-77.

12. Gatrell and Hadden, *op. cit.*, p. 374.

13. *Ibid.*, pp. 373-77.

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lar U-curve pattern exists, though with slightly different turning points, if we look at other forms of deviant behavior such as illegitimacy or the misuse of narcotics or alcohol. Illegitimacy rates are in a sense an index of the level of female deviant behavior in a society, just as crime (a predominantly male activity) rates are a measure of male deviance. If we exclude the marked fluctuations in the rates of illegitimacy that occurred during the two world wars, the pattern of changes in the incidence of illegitimacy in Britain is rather similar to that of crime. During the latter part of the nineteenth century, illegitimacy rates fell; they then remained at a fairly low level in the early years of the twentieth century; but they rose again sharply in the mid-1950s,[14] despite the widespread availability of reliable methods of contraception and in recent years of free socialized abortion. It is more difficult to trace out a coherent pattern of drug abuse, but in general, the same three stages emerge. The nineteenth century saw much casual consumption of opiates (e.g. laudanum) and a great deal of hard drinking and public drunkenness. There then followed a period of greater private temperance and public sobriety in the last quarter of the century and in the early and middle years of the twentieth century.[15] This was a period in which narcotic addiction was also an extremely rare phenomenon.[16] In recent years, the abuse of alcohol has again become an increasing problem,[17] and since about 1960 there has been a very rapid rise in the number of known addicts to heroin and related drugs.[18]

British society appears to have a so-called U-curve incidence of deviant behavior during three distinct stages over the last one hundred and thirty years or so. We may term these three periods: Reforming Britain (the Victorian era); Respectable Britain (the end of the nineteenth century and the early years of the twentieth cen-

14. Peter Laslett, *Family Life and Illicit Love in Earlier Generations* (Cambridge University Press, Cambridge, 1977), pp. 113 and 123, for details of illegitimacy rates and illegitimacy ratios in the relevant periods; see also Shirley Foster Hartley, *Illegitimacy* (University of California Press, Berkeley and Los Angeles, 1975), pp. 39–40.

15. Gatrell and Hadden, *op. cit.*, p. 370; A. E. Dingle, "Drink and Working Class Living Standards in Britain 1870–1914" in Derek Oddy and Derek Miller, eds., *The Making of the Modern British Diet* (Croom Helm, London, 1975), pp. 118–21, 131; Christie Davies, *Permissive Britain, Social Change in the Sixties and Seventies* (Pitman, London, 1975), p. 166.

16. Davies, *op. cit.*, 1975, pp. 140–42.

17. *Ibid.*, p. 166.

18. *Ibid.*, pp. 150–56.

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tury); and Permissive Britain (the middle years of the twentieth century down to the present day).

Reforming Britain

Reforming Britain saw the mastering and reduction of various forms of criminal and deviant behavior. Respectable Britain was a period of orderly stability when the norms of good behavior that had been gradually established by the reformers were on the whole upheld and maintained, albeit with increasing difficulty towards the end of the period. Permissive Britain saw the breakdown of these hard-won norms of respectability, the growth of crimes of violence and dishonesty, and a rise in other forms of deviance such as illegitimacy and the abuse of drugs and alcohol.

This peculiar pattern of long-term changes in the levels of deviant behavior and of crime in particular in recent British social history cannot be easily explained in terms of the fundamental demographic, economic, technological, or political causal variables usually cited. Urbanization and industrialization; the mechanization and automation of work; improvements in longevity and in real living standards; the growth of government power; responsibility and expenditure were all relatively well advanced during the period I have termed Reforming Britain and continued to increase inexorably throughout all three periods. Changes in the age-structure of the population or in levels of economic activity and employment may be used to explain certain short-term fluctuations in crime rates, but they are not able to account for the broad long-run trends outlined. In order to find an explanation for the rise and fall of Respectable Britain, I examine the growth and, more important, the changing nature of bureaucracy in Britain—a social change which directly affected the moral outlook of the British elite and indirectly influenced the degree to which those individuals and groups most likely to commit serious crimes were morally restrained from doing so.

The early nineteenth century in Britain was a period of economic and moral turmoil. Urbanization, industrialization, and increased social and geographical mobility had broken down the traditional local social controls that had held antisocial behavior in check; the result was an increase in crime, illegitimacy, and other symptoms of social disorder. However, the Victorian elite tackled these problems successfully by gradually imbuing all classes with a morality that I have termed moralism.[19] This mo-

19. *Ibid.*, pp. 3-5, 15-16.

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rality, rooted as it was in British Protestant individualism and in the ideas natural to a society whose central economic institution was the free market, had as its central tenet the idea that each individual was morally responsible for his own behavior. The duty of the individual was to behave well, and social morality was a matter of deciding who was morally in the right and who was morally in the wrong, rewarding or protecting the innocent, and restraining or punishing the guilty. For those who believed in moralism, fairness was seen as the distribution of rights and penalties according to the moral worthiness of the parties.[20]

These ideas were diffused throughout society by the operation of its religious and legal institutions and of the marketplace. The way in which the free market could operate so as to inculcate an ethic of personal responsibility, even in the humbler strata of society at this time, has been well described by Bryan Wilson:

> In a more complex social system where even for the least privileged there was a diversity of moral choices and moral stances, a man distinguished himself and marked himself out as a candidate for social mobility by being a moral man. In Britain, for example, it was quite normal in the late nineteenth and early twentieth century for a workman—any sort of workman in the humbler walks of life—to rely not merely on, and perhaps not mainly on, any certification of his technical skills (that day was still to come) but on evidence of his moral worth. He often had, sometimes literally in an envelope in his breast pocket what he called "my character"—a testimonial from some employer that affirmed the man possessed those moral virtues so much prized among nineteenth century workers. Those virtues were, typically: honesty, willingness, industry, conscientiousness, punctuality, sobriety, and a sense of responsibility.[21]

Religion played an equally important role in diffusing these ideas throughout society. "In Methodism and the subsequent Holiness movement and in the general inter-denominational revivalism of the period there was an attempt through evangelical religion to disseminate to new lower social classes a new morality

20. Christie Davies, "Moralists, causalists, sex, law and morality" in W.H.G. Armytage, R. Chester, and John Peel eds., *Changing Patterns of Sexual Behaviour* (Academic Press, London, 1980), pp. 13–16.

21. Bryan Wilson, "Morality and the Modern Social System" in Acts, 16th International Conference for the Sociology of Religion, Lausanne 1981, "Religion, Values and Daily Life," (CISR, Paris, 1981), p. 344.

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associated certainly with the work ethic but by no means confined to the narrow sphere of work.''[22]

Efficient Police and Compulsory Schooling

The nineteenth century also saw a growth in the size and importance of government agencies in Britain notably with the ''progressive introduction of police forces throughout the country as a result of the legislation of 1829, 1835, 1839 and 1856''[23] and with the provision of universal compulsory education after 1870. In the long run, these changes may be viewed as part of a general growth in the size of the state bureaucratic apparatus that was eventually to undermine the moral achievements of the Victorians. During the nineteenth century, however, the establishment of increasingly efficient police forces and of compulsory schooling almost certainly helped to reduce crime rates. At the very least, the former acted as an effective deterrent to the criminal[24] and the latter as a means of incapacitating potential juvenile delinquents. Both police and schools were probably even more important as moral agents in the society. Their effectiveness was a result of their peculiar combination of local organization and national ethos. The police were organized on a local basis, and the police officer knew his local community, but the responsibility of the police was to uphold a uniform national code of criminal law and not to make too many concessions to local moral eccentricities. Similarly, the new schools were the responsibility of the local authorities and were small enough to act as effective means of social control in the immediate neighborhood from which they drew their children, but the morality with which they sought to inculcate their pupils was the moralism of the wider society. Both schools and police acted as local agents of a national morality, and eventually this national morality prevailed over any local or subcultural excuses that particular groups might previously have advanced as their reason for not living up to it. In consequence, by the end of the nineteenth century, ''The separate criminal districts had more or less disappeared though there remained streets with evil reputations. The great mass of juvenile criminals was no longer to be found and the remaining groups of professional criminals formed it seems a smaller proportion of the population.''[25]

22. *Ibid.*, p. 344.
23. Gatrell and Hadden, *op. cit.*, p. 353.
24. *Ibid.*, pp. 353–55, 377.
25. J. J. Tobias, *Crime and Police in England 1700–1900* (Gill and Macmillan, London, 1979), p. 181.

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All these changes which went into the creation of Respectable Britain were well summed up by Geoffrey Gorer in the early 1950s—ironically, enough just as the society he described was about to go into rapid moral decline:

> During the nineteenth and the first half of the twentieth centuries, the strict conscience and self-control which had been a feature of a relatively small part of the English population became general throughout nearly the whole of the society, as the present study has indicated. The forces which led to his transformation in character [from "one of the most lawless populations in the world" to "one of the most law-abiding"[26]] are difficult to establish; although religious belief is not nowadays typical of the prosperous working class it is possible that the evangelical missions of John Wesley...may have played a significant part in their time, particularly in the industrial Northern regions. So, too, may have done the gradual spread of universal education. On the basis of the evidence available to me, however, I should consider that the most significant factor in the development of a strict conscience and law abiding habits in the majority of urban English men and women was the invention and development of the institution of the modern English police force.[27]

Professor Gorer, in 1955, particularly and repeatedly drew attention to the remarkable degree of self-control over aggression exerted by the citizens of Respectable Britain, particularly when one considers their violent past (and, it might be added in 1982, their violent present). Indeed, it seemed to him to be the "central problem for the understanding of the English character":[28]

> ...in public life today, the English are certainly among the most peaceful, gentle, courteous and orderly populations that the civilised world has ever seen. But from the psychological point of view this is still the same problem; the control of aggression when it has gone to such remarkable lengths that you hardly ever see a fight in a bar (a not uncommon spectacle in most of the rest of Europe or the USA) when football crowds are as orderly as church meetings...this orderliness and gentleness, this absence of overt aggression calls for an

26. Geoffrey Gorer, *Exploring English Character* (The Cresset Press, London, 1955), p. 286.
27. *Ibid.*, p. 294.
28. *Ibid.*, p. 13.

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explanation if the dynamics of English character are to be effectively described.[29]

What is amazing today in an England disturbed by riots and the growth of violent crime, a country whose football crowds are known throughout Europe for their aggressive hooliganism, is that there could have been such a peaceful interlude in Britain's history. The British no longer, like Professor Gorer, ask of their distant past: "What has happened to all this aggression, this violence, this combativeness and mockery?"[30] They know that much of it is gradually seeping back.

Respectable Britain Declines

The decline of Respectable Britain, the eclipse of the era of the law-abiding British, can ultimately be traced to the ever-increasing bureaucratic centralization of British society in the twentieth century and the linked, but independent, rise of a corrosive ethic of socialist egalitarianism. Both these changes undermined the moral fabric of Respectable Britain and eroded its central belief in individual personal responsibility. The bureaucratization of both private and public institutions in Britain has slowly resulted in a change in the moral outlook of the British elite from one of moralism to one of what I have termed causalism.[31] Whereas the aim of the moralist is always to distribute benefits and penalties according to the moral deserts of the people involved in a situation, causalists seek rather to minimize the overall harm and suffering experienced by the various parties regardless of their moral status or past behavior. The moralist seeks justice while the causalist seeks welfare. Causalists are essentially then short-term negative utilitarians who seek always to minimize immediate harm, distress, or suffering in the particular, observable situations with which they are confronted. They tend to consider only the short-term consequences of their decisions and to assume that people's moral attitudes remain unaffected by these decisions.

In some ways the view that I have termed causalism emerges naturally in an increasingly bureaucratic society. Indeed, the causalist mode of tackling moral questions is one that developed originally because it was the most convenient way of governing

29. *Ibid.*
30. *Ibid.*, p. 16.
31. Davies, *op. cit.*, 1975, pp. 3-7, 17-44; Davies, *op. cit.*, 1980, pp. 14, 35-38.

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the relationship between large bureaucratic organizations. Business corporations, government departments, and labor unions are not people; the relationships between them tend to be viewed increasingly as questions of cause and effect and of accountability and liability rather than praise and blame, reward and punishment. The legal relationships between such institutions are almost necessarily causalist in nature. The growth of Lord Devlin's category of quasi-criminal laws is a good example of this:

> The distinguishing mark between the criminal and the quasi-criminal lies not in the use of a statutory provision but in the presence or absence of moral content in the statutory provision containing the offence... The first distinguishing mark of the quasi-criminal law is that a breach of it does not mean that the offender has done anything morally wrong. The second distinguishing mark is that the law frequently does not care whether it catches the actual offender or not. Owners of goods are frequently made absolutely liable for what happens to the goods while they are under their control even if they are in no way responsible for the interferences; an example is when food is contaminated or adulterated. Likewise, they may be made liable for the acts of their agents even if they have expressly forbidden the acts which caused the offence. This sort of measure can be justified by the argument that it induces persons in charge of an organization to take steps to see that the law is enforced in respect of things under their control.[32]

An essentially similar moral can be drawn from Devlin's description of the law of tort which is clearly based on causalist rather than moralist principles:

> But that is not the way in which the law of tort has grown up nor is it the function it now performs. Normally the relevant question in this branch of the law is not 'Who is to blame?' but 'Who is to pay if things go wrong?'; and the judgement is expressed as a sum fined not as a punishment for blameworthiness but as compensation for damage done. I do not think that a branch of the law whose object is to provide compensation for damage can be used directly to serve a moral purpose. The reason put shortly is that while liability can be made to depend on moral guilt, full compensation for injury done cannot be made to depend on the degree of moral guilt;

32. Lord Devlin, *The Enforcement of Morals* (Oxford University Press, Oxford, 1965), p. 28.

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guilt depends upon a state of mind but damage done does not.[33]

As this branch of the law has become increasingly important, and as criminal law has come to constitute a shrinking proportion of our total laws, so questions of guilt and innocence have moved to the periphery of our legal and moral thinking.

These tendencies in British law reach back far into the nineteenth century and beyond, but in recent years they have become far more dominant as large impersonal institutions have become more important, and their relationships have become more complex. Members of the rule-making British elite are more and more involved in making, operating, and manipulating rules of this kind to govern and regulate large bureaucratic institutions. In consequence, their thinking on social and economic issues of *all* kinds tends to become less concerned with the moral guilt of individuals and seeing that each man gets his deserts and to move with the causalist regulation of great corporations so as to avoid harm and provide compensation for damage regardless of blameworthiness. Eventually, as I have shown elsewhere,[34] men who spend their time arguing about corporations and bureaucracies in this way come to regard the moral behavior of individuals in similar terms. Causalism comes to involve the application of the ethos of the law regulating bureaucracies to questions of individual morality and moral responsibility.

Moral Rules Neutralized

An elite, whose moral thinking is predominantly causalist rather than moralist, is less able to make confident moral demands on the ordinary citizen. A society that no longer sees the world predominantly in terms of individual responsibility or of reward and blame is less likely to be able to insist on the moral guilt of its delinquents. The delinquent and potentially delinquent members of a society are rarely completely amoral persons; rather they are individuals who accept the moral demands of their society—for example, that violence or theft or vandalism is wrong—but who find reasons to excuse their own failure to live up to these demands. They live in a precariously balanced moral world in which their adherence to moral rules tends to be neutralized[35] by

33. *Ibid.*, p. 34; see also Emil Durkheim, *The Division of Labour in Society* (Free Press, 1946).

34. Davies, *op. cit.*, 1975, pp. 207–16; Davies, *op. cit.*, 1980, pp. 38–42.

35. I have been influenced here by Graham M. Sykes and David Matza, "Techniques of Neutralization: A Theory of Delinquency," *American Sociological Review* vol. 22, no. 6, December 1957, pp. 664–70.

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various forms of subjective evasion of personal responsibility: what they have done or are tempted to do is not "really their own fault," is "not really as wrong as it looks," is "no worse than what goes on elsewhere." In a causalist society, such excuses and forms of self-deception are more plausible and more widely accepted, because they echo the moral uncertainties of the elite itself. The enhanced, illicit self-justifications and moral evasions of the delinquent are but a reflection of the doubts about moral responsibility that grow and fester in the minds of those who manage an increasingly bureaucratic society.

The link between bureaucratization, causalism, and delinquency that I have suggested is one that will tend to exist in most industrial societies and probably underlies the current widespread rise in crime, deviance, and delinquency in those societies. However, it does not follow that such a rise is inevitable. Some societies in the free world, notably Japan and Switzerland, have been able to absorb, adapt, and resist bureaucratization in such a way as to avoid the erosion of their moral order. In Japan the incidence of illegitimacy has fallen dramatically in the twentieth century from 8.8 percent of all live births in 1900 to 0.9 percent in 1968.[36] Furthermore "the rate of non-traffic penal code offences known to the (Japanese) police per 100,000 population decreased from 1,756 in 1950 to 1,476 in 1960 to 1,232 in 1970 and to 1,159 in 1980."[37] The case of Switzerland is particularly instructive for in contrast to the rapidly rising incidence of crime and illegitimacy that has characterized Britain and Sweden in the middle years of the twentieth century, the Swiss have, until very recently, not experienced any change in the rates of either of these two indices of social disorganization. The proportion of live births that were illegitimate remained low and practically constant (it varied between 3.2 and 4.8 percents) in Switzerland between 1876 and 1968.[38] This is in marked contrast to the U-curve pattern to be found in the British Isles and Scandinavia. Even more remarkable is Switzerland's freedom from crime: recorded crime rates are very low and show

36. Hartley, *op. cit.*, pp. 50–51. It should be noted, however, that much of the earlier recorded illegitimacy referred merely to the paternally acknowledged children of established concubines.

37. Minoru Yokoyama, "How Have Prisons Been Used in Japan," paper presented at the world Congress of the International Sociological Association, Mexico City, August 18, 1982. Minoru Yokoyama, "Delinquency control programs in the community of Japan." *International Journal of Comparative and Applied Justice.* Winter 1981, vol. 5, no. 2, p. 169; Radzinowicz and King, *op. cit.*, p. 7.

38. See Hartley, *op. cit.*, pp. 39–43.

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little increase over time.[39] Thus, "as measured by convictions the total Swiss rates for violations of the Swiss criminal code remained almost constant from 1960 to 1971 as [did] offences against property rates....Conviction trend data in five European countries (Switzerland, Belgium, Denmark, Norway, England, and Wales) have shown that Switzerland was the only country with general stability in the conviction rates and even some decreasing."[40] Studies of victimization of the records of insurance companies and of the untroubled-by-crime daily behavior and experience of the ordinary Swiss citizen prove that the Swiss official statistics on crime are, in fact, a reasonably true reflection of a genuinely crime-free society.[41] The key question is: how has respectable Switzerland managed to maintain the kind of crime-free society which the British only achieved for a brief and transient period in their history? The reasons for the success of the Swiss in avoiding crime are similar to those for the earlier success of the British. They are the obverse of the reasons for the current failure of the British (or the Swedes) to deal with crime effectively.

Switzerland, like the respectable Britain of a past era, owes its freedom from crime to the highly developed sense of individual responsibility of its citizens.[42] The Swiss have been able to preserve this vital first line of defense against crime, because they have avoided the worst aspects of twentieth-century bureaucracy—bureaucratic centralization and bureaucratic egalitarianism. The Swiss sense of personal responsibility is rooted in the high degree of general responsibility that the Swiss citizen has in political and economic affairs. Swiss society is characterized by "Political decentralization of the government...particularly at the cantonal and communal levels. At these levels the individual citizen plays an important role in the government, assuming greater responsibility for social and crime control measures."[43] In Sweden (it could equally well be Britain), a Prime Minister can state that "a society has to an increasing extent taken the responsibility of individuals. Social reforms have required that more and more people must communicate with authorities."[44] Following a different road

39. See Clinard, *op. cit.*, pp. 34–52.
40. *Ibid.*, p. 46
41. *Ibid.*, pp. 61–82.
42. *Ibid.*, pp. 112–13.
43. *Ibid.*, p. 150.
44. Olof Palme quoted in Clinard, *op. cit.*, p. 153.

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the Swiss have largely given only a limited role to the government. As a result, centralized welfare programs and government controls are more limited in Switzerland and more reliance has been placed on the individual citizen and the work goal orientation among Swiss youth.[45] "The Swiss still believe that except for state and vocational group insurance each person should try to save with the incentive to build up some capital or to have voluntary insurance. Such an approach which emphasizes a strong work ethic and the need for future goals is still being instilled in the Swiss youth."[46]

The Swiss Model

The contrast between the centralized Swedish welfare state and Swiss welfare arrangements also expresses and exaggerates another vital difference between these two societies—their view of equality. The Swiss ideal of equality is essentially one of equality of responsibility, of equality between government and people, something that is remarkably lacking in egalitarian Sweden.

> In Switzerland social security is treated as insurance provided by a company, the citizen seeing himself as a customer and hence the master patronising a service. In Sweden the position is reversed. The citizen has been taught or chosen to believe that he is the servant, humbly suing for favours from his master, the State. It is a kind of serf mentality, constantly imprinted and not only in the sphere of social welfare.[47]

The modern Swede, or the modern Briton, is robbed of his sense of individual responsibility by the over-centralized, over-bureaucratized society in which he lives, a society whose very nature owes much to an egalitarian ideology very different from that of the Swiss. This ideology seeks to use the bureaucratic machinery of the state to compel individuals to be equal to one another—equal not in responsibility but in fortune, attainment, and worthiness. Both the aims of such a socialistic ideology and the means which its proponents have been forced to use are *necessarily* destructive of the ordinary citizen's sense of personal moral responsibility. It is easy to see why the means used have this effect—the equalization of faculties between different geographical areas for its own sake, or for the benefit of particular social classes or

45. Clinard, *op. cit.*, p. 153.
46. *Ibid.*, p. 112.
47. Huntford, *op. cit.*, p. 186.

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ethnic groups who often live in specific relatively homogeneous areas, necessarily involves greater centralization. Attempts to produce greater equality of educational attainment also tend to produce larger schools and larger catchment areas, which simultaneously impair the school's ability to act as a training ground for personal responsibility *and* the local community's sense of responsibility for the school. Moreover, the very idea of achieving equality through social and political regulation is in itself incompatible with the ideal of personal responsibility. Egalitarianism compounds the problem inherent in what I have termed causalism, for ultimately the egalitarian is forced to argue that people should be treated equally regardless of their individual behavior and deserts.

Indeed, within the framework of an ideology of distributive justice, individuals rapidly cease to have deserts or personal responsibility at all. For the egalitarian ideologue of this type, a person's position in life is essentially arbitrary and can be subject to egalitarian regulation at will. Ultimately, not merely are the rich and the poor, the lucky and the unlucky, the intelligent and the stupid to be made equal, but also the virtuous and the wicked.

Societies with low levels of crime, such as Switzerland or once Respectable Britain, are, or were, characterized by a strong and widespread sense of personal responsibility which grew out of their highly decentralized political and welfare systems. Therefore, "Communities or cities that wish to prevent crime should encourage greater political decentralization by developing small government units and encouraging citizen responsibility for obedience to the law and crime control."[48] In such societies, effective police forces can be organized which not only deter criminals but also act as a crucial moral influence in the local community.

Since inequality is not a cause of crime, crime rates cannot be reduced by the political pursuit of social equality. Indeed, policies that have aimed at producing equality through political and bureaucratic intervention have been the underlying cause of the rise in crime in Britain and Sweden in recent years. Any society that wishes to reduce crime would be well advised to abandon policies based on bureaucratic egalitarianism, which are ultimately destructive of society's first line of defense against crime—the ordinary citizen's sense of personal moral responsibility.

48. Clinard, *op. cit.*, p. 156.

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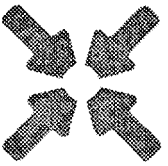
What does this mean in relation to America's crime problem and possible solutions? This study suggests that past policies for dealing with crime in America may have failed because they too have been formulated within a framework of egalitarian and bureaucratic thinking. What is needed is a set of policies drawn up outside that framework of thinking which address the problem of how to create a widespread sense of personal responsibility in America. The Swiss experience suggests that this is not an entirely impossible task.



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Infant Formula, Science, and Politics

CAROL ADELMAN

In May of 1981, the United States government was the only member government in the World Health Organization (WHO) to vote against an international code regulating the promotion and use of infant formula and other foods for young children.[1] In the period leading up to this vote, the issue had generally been presented by the media as a simple matter of right versus wrong. Churches, charities, concerned scientists, and the vast majority of the world's governments were depicted as anxious to prevent one million infant deaths caused by the unscrupulous promotional methods of infant formula companies, whereas the Reagan administration was portrayed as preoccupied with defending the "free enterprise" of multinational corporations against international bureaucratic regulation. The corporations themselves insisted that their promotional practices were not responsible for infant mortalities, but this self-exculpation was generally disregarded. As a result, the American vote in Geneva, where the World Health Assembly convenes each year, inspired widespread outrage from the American public and in Congress which, indeed, disavowed the administration's policy. But did this black and white picture represent the best scientific evidence of the effects of infant formula? And were the arguments employed by critics of U.S. policy valid? Evidence has been emerging since the May 1981 vote which strongly suggests not.

The controversy had been long germinating. In 1977, the Minnesota-based Infant Formula Action Coalition (INFACT) initiated a nationwide boycott of all Nestlé's United States products. At the same time, they began lobbying efforts against the formula companies' methods of promotion such as: mass media advertising to the public, distributing free formula samples to mothers, and the use of "milk nurses" or company representatives to explain products to mothers. In response to earlier criticism, the companies had already formed the International Council of Infant Food Industries (ICIFI) in 1975 and developed a Code of

1. 118 countries voted yes; 1 voted no; 3 voted abstentions; 35 did not participate in the voting.

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Ethics and Professional Standards. But this failed to stem the anti-industry tide. Nonscientific critics of the industry were increasingly joined by supporters of an international WHO code in the international health community. They promised one million fewer infant deaths a year if infant formula were to be strictly regulated.

Eventually, after innumerable meetings, including one scientific gathering in 1979 with WHO and UNICEF as the coordinators, the fourth and final draft of the code was voted on. It prohibits advertising to the general public, point of sale advertising (at the retail level), and the use of "milk nurses." While supplies of infant formula may be donated by companies to institutions, samples may not be provided to health workers except for professional evaluation or research. This was considered a recommendation, although an accompanying resolution called the code a "minimum requirement." Under the code's provisions, WHO member states are required to communicate annually to the director general on actions they have taken to further its principles and aims.

Science's Second Thoughts

Throughout the controversy, the advocates of breastfeeding had claimed, and perhaps believed, that their views reflected the best evidence of the scientific community. These antibottlefeeding arguments were backed by the American Public Health Association and the Ambulatory Pediatric Association and were heard repeatedly during the vote and its aftermath. But some very different scientific opinions have since cast doubt on these assurances.

Thus the editor-in-chief of *Pediatrics*, Dr. Jerold F. Lucey, pointed out: "The American pediatric community, American Pediatric Society, Society for Pediatric Research, Ambulatory Pediatric Association, and American Academy of Pediatrics were not brought into these deliberations until April 1981, months after the fourth and final draft of the Code had been made."[2] Dr. Lucey also complained that the government's advisory Committee on International Nutrition Programs (National Academy of Science) had not been asked for its opinion on the code. In the minutes of their April 1981 meeting, the Society for Pediatric Research (SPR) explained how, after a lengthy discussion, the membership

2. Jerold F. Lucey, editor-in-chief, "Editor's Note," *Pediatrics*, Vol. 68, No. 3 (September 1981), p. 431.

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present could not endorse the code as a society "because of uncertainties regarding the scientific data base on which the Code is predicated and possible lack of applicability of the general principles to all countries."

As a result of these expressions of concern by leading pediatric organizations, the Council of the Society for Pediatric Research commissioned a review of the scientific evidence regarding nutritional, immunobiological, and other aspects of human milk versus commercial formula. This paper, prepared by pediatricians Dr. Pearay L. Ogra and Dr. Harry L. Greene, was unanimously adopted by the Society for Pediatric Research and the American Pediatric Society at their recent membership meetings in May 1982. The American Academy of Pediatrics (AAP) prepared a separate policy statement which appeared in the May issue of *Pediatrics*.

The result of these reviews was a set of recommendations, which first confirmed existing thinking on the importance of educating mothers and the medical profession on breastfeeding and encouraging these practices in hospitals and work places. The supporting reviews also emphasized, however, that the importance of commercial formula products must *not* be ignored as they have served as valuable nutritional supplements and, in certain situations, effective breast-milk substitutes when breastfeeding has not been possible. These statements essentially support the *aim* of the WHO code to promote breastfeeding and to ensure the proper use of breast-milk substitutes through adequate information and appropriate marketing and distribution; but they criticize the WHO code for concentrating primarily on the regulation of marketing practices of formula manufacturers to the exclusion of other aspects of the problem. The recent AAP policy statement reiterated its earlier concerns with the code: "The narrow focus and the essentially negative regulatory proposals of the Code represent a limited approach to an issue that is complex and involves extensive social, economic, and motivational factors."

With respect to companies' promotional practices, recommendation number eight states categorically: "The AAP and Councils of the Society for Pediatric Research and the American Pediatric Society are opposed to any ban on a global basis of advertisement of commercial milk formulas or weaning food products, unless such products can be demonstrated to be potentially hazardous to human nutrition and infant well being." They go on to recommend that such advertising be directed solely to the medical pro-

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fession, a practice which has traditionally been the case in the United States *and which the majority of infant formula manufacturers had agreed to for developing countries well before the WHO code was drafted.* The recommendations cover two other promotional practices—the use of "milk nurses" in hospitals of developing countries, and the mass distribution of free samples of infant formula to mothers in hospitals. But by 1979, both of these practices had been largely eliminated in developing countries by those companies which together hold the largest share of the overseas infant formula market. Several manufacturers still have "mothercraft" personnel in a limited number of developing countries, which they claim is at specific request of the countries or their medical professions and which is strictly regulated. The recommendations of the three pediatric groups state that evidence is not conclusive to support the claim that free samples to mothers in hospitals influence their feeding choices. And while discouraging any routine distribution of infant formula samples, the three organizations would allow free samples or discharge packs to be given, upon a physician's recommendation, to mothers who have decided to bottlefeed.

These recent recommendations, supported by balanced and dispassionate reviews of the evidence by three pediatric scientific groups, stand in sharp contrast to the ardent and much-quoted statements of the scientific community at the time of the controversy. Many of these physicians and health professionals who, on other life and death matters for infants, relied upon sound evidence in formulating policies and engaging in rational discourse, had simply allowed their emotions to influence their evidence in the debate.

Thus, Stephen Joseph, Harvard and Yale-trained physician serving as AID's senior health official, resigned from the government after its "no" vote. He was quoted by R. Emmett Tyrrell as charging the companies with turning "baby bottles into lethal weapons," and calling attempts within the government to question the correlation between marketing practices and infant disease "ignorance or falsehood" by industry "apologists in the administration." Dr. Derrick B. Jelliffe, the leading international pediatrician and founder of the antiformula movement, is widely quoted as attributing ten million cases a year of infant malnutrition and disease to improper bottlefeeding. Dr. Jelliffe later conceded to *Newsweek* that the ten million number was "symbolic" and not a scientific assessment. James Grant, executive director of UNICEF, offered a much lower figure—one million infant

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deaths a year—but, here as well, UNICEF later admitted that his figure too was just an estimate, not based upon reliable studies. Nonetheless, the one million deaths yearly from infant formula became the most frequently quoted phrase in the debate, used time and again by editorial pages, columnists, and activists. The number even appeared in the House resolution which supported the marketing code.

The leading antibottle group supporting the code was INFACT, an extremely well-organized lobby which reports on worldwide formula company violations, as well as organizes the boycott of Nestlé. Their INFACT-grams, bordered with pictures of starving babies, contained such dispassionate commentaries as this: "I want to tell you briefly how Nestles markets their formula so that you can understand not only how uncaring they are but also how crucial INFACT is in stopping what may become a global Jonestown where instead of Kool-Aid, formula milk is the agent of death."

Other voices were heard throughout the controversy, but they were usually on the defensive. Dr. John Dobbing, for example, a British professor of child growth and development at the University of Manchester, recognized infant feeding as "a complex subject made even more complex by the endless emotional attitudes that are struck, mainly by doctors." A distinguished nutritionist, Dr. John C. Waterlow wrote: "In the eyes of some, to suggest that growth faltering may be caused by inadequate breastfeeding is an attack on the concept of breastfeeding and opens the door to exploitation by industry. Such an attitude is surely sterile."

Once stripped of this emotional and political rhetoric, the scientific case against the infant formula companies could be reduced to five major assumptions: that 1) there had been a dramatic decline in breastfeeding in developing countries; 2) bottlefed infants came largely from the poorest families in developing countries; 3) bottlefed babies in both developing and developed countries had higher disease and death rates than those breastfed; 4) mother's milk was the "perfect" food; and finally, 5) corporate promotional practices contributed significantly to a mother's decision to bottlefeed.

Recent scientific reviews by three leading U.S. pediatric organizations discussed some of these assumptions. How did they fare? Close scrutiny produces a portrait of reality far different from the one which prevailed during the public debate over the WHO code. And, while the assumptions and arguments surrounding the code

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were based on the situation in developing countries for the most part, many are relevant to the debate on the issue in the United States.

Has Breastfeeding Declined Dramatically in Developing Countries?

There are only a handful of studies which are designed to measure any changes in breastfeeding over time in Third World countries. Most are recent (1981) unpublished papers and only two show any significant decline. In Taiwan the percentage of breastfeeding dropped from 93 percent in 1966, to 50 percent in 1980, and in Malaysia from 89 percent in 1960, to 74 percent in 1974.[3] In the other three countries where adequate trend data are available—South Korea, Thailand, and Mexico—there has been little, if any, change over time.

Despite the paucity of studies showing changes over time, there does exist a variety of studies, by groups such as the U.S. Center for Disease Control (CDC) in Atlanta, the World Fertility Survey (WFS) in London, and WHO's own nine country *Collaborative Study on Breastfeeding* which measure the *current* percentage of women either breast or bottlefeeding. Based on an analysis of the WFS studies in developing countries, the Population Reference Bureau concluded: "Breastfeeding is universal in most of the nineteen reporting countries. The percentage of children born during the three years prior to the survey who were breastfed ranged from nearly 98 percent (Nepal) to 74 percent (Malaysia). In almost two-thirds of the countries, 90 percent or more of the babies are breastfed for some length of time." Both the CDC and WHO surveys (which included African countries as well) confirmed these same high percentages of breastfeeding women. With the exception of a few Latin American and Asian countries and many of the Caribbean countries, in short, average percentage and duration of breastfeeding remain extremely high, while the average percentage of bottlefeeding is very low.

It was evidently too exacting for INFACT to research this basic information. When asked at Congressional hearings about the percentage of bottlefeeding in developing countries, INFACT

3. Taiwan and Malaysia, it should be noted, have infant mortality rates which rank among the lowest in the developing world. Each country's rate is less than half the average for its region, with Taiwan's close to the average for Eastern Europe.

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witnesses simply did not know. AID's Office of Nutrition, Health and Human Services' Office of International Health (HHS) and WHO knew about these surveys but, for reasons that remain obscure, never used this information publicly nor pointed it out to the press. Instead, they proceeded with developing a WHO code based on a distorted major premise.

Are Bottlefed Infants from the Poorest Families?

Even the relatively small percentage of bottlefed babies in developing countries, however, should not eliminate our concern for this problem. This is particularly so in the case of poor mothers who cannot afford to purchase formula and are more likely to mix it with dirty water and to keep it unrefrigerated. A contaminated, diluted mix can then be fed to infants with serious, sometimes fatal, consequences.

The question, therefore, becomes one of identifying bottlefed babies in developing countries. The pro-code activists have assumed that they come mainly from poor families, while corporations selling formula argue that they are from families of higher socioeconomic status who are better able to support adequate bottlefeeding (i.e., sufficient amounts, refrigeration, and electric stoves for convenience in boiling water).

Unfortunately, there has been little study of this central question. What sparse data were available, as for example the John Knodel and Nibhon Debavalya study in Thailand,[4] however, were largely ignored by the code creators. It suggests that, in general, better educated and wealthier women bottlefeed more than less educated and poorer women. Even WHO's own survey showed that, with the exception of one country, bottlefeeding was more common in economically advantaged, educated, urban families than among the poor disadvantaged families. The WHO data suggest that the majority of bottlefed babies come from urban upper and middle income groups while the minority come from the urban and rural poor. Comparing nineteen developing countries, the Population Reference Bureau reported: "It is quite clear that countries with a higher GNP per capita have lower percentages breastfed and shorter durations of breastfeeding than those with lower GNP per capita." This relationship also emerged when re-

4. John Knodel and Nibhon Debavalya, "Breastfeeding Trends in Thailand and Their Demographic Impact," *Intercom*, (March 1981), p. 8.

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searchers used other indices of economic development more sensitive to income distribution in a country.

This finding helps to explain why, in countries where bottlefeeding is higher, the overall infant mortality rates are lower. John Knodel and Nibhon Debavalya reported: "Infant mortality in Thailand in both rural and urban areas has continued to fall at the same time breastfeeding has declined. It is also evident that infant mortality is far lower in urban areas than in rural areas despite the greater prevalence of breastfeeding and its longer average duration in the latter." The authors attributed this phenomenon to the compensating effects of improvements in socioeconomic status which accompanied the increase in bottlefeeding.

Such gross comparisons do not mean, necessarily, that bottlefed babies of comparable groups (similar socioeconomic status and similar health status prior to bottlefeeding) have lower mortality rates than breastfed babies in the same country. We lack adequate studies to determine the magnitude of this differential. However, if it is true that Third World, bottlefed babies are primarily from the better-off families, one could reasonably postulate that when all formula-fed are compared to all breastfed babies, the ones on the bottle would be growing better with less disease.

Throughout the controversy surrounding the code, the American media failed to report such findings, indeed distorted them. One science writer, Stephen Solomon, in a *New York Times Magazine* piece notable for its failure to mention any opposition to the WHO code or its premises by a physician or other health professional, wrote: "In large third-world cities mothers who choose breastfeeding, for example, are often better educated and have greater financial means."[5] The few studies which exist on the topic, however, demonstrate the opposite conclusion.

Do Bottlefed Babies Have Higher Disease and Death Rates?

This is the assumption most frequently made by those who favored the WHO code. They correctly noted numerous studies in developing countries which showed that bottlefed babies had higher disease and death rates than the breastfed. What they did not point out, however, was that none of these studies has been able to take into account the inherent social, economic, and motivational differences between a group of mothers which chooses

5. Stephen Solomon, "The Controversy Over Infant Formula," *New York Times Magazine*, (December 6, 1981), p. 104.

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to breastfeed and a group which chooses to bottlefeed. A study group can rarely, if ever, be evenly matched for adequate comparisons of breast versus artificial food. The recent AAP review points to this as one of the two most important problems in design of comparative infant feeding studies. The other key problem is that infants who breastfeed will continue to breastfeed if they are healthy. If *not* healthy, they will likely be switched to partial or complete artificial feeding. This means that statistical comparisons between breast and bottlefed babies may be biased with more unhealthy infants moving into the bottlefed category. In studies in developing countries, especially, one rarely knows if a baby was bottlefed because it was premature and unable to suckle well, or orphaned, or ill at birth or soon thereafter, or had some other defect which led to the bottlefeeding and thus, the reported illness.

Another important point in comparing breastfed and bottlefed babies is that in virtually all of the overseas studies, it is unknown what is actually inside the feeding bottle. It is quite likely that mothers may have added mixtures including everything from infant formulas to corn starch and carbonated beverages. Thus, we have no idea whether the morbidity studies are indeed comparing formula-fed with breastfed babies.

Despite these methodological problems, scientists agree, for a host of nutritional and immunological reasons, that breastfeeding helps to protect against disease and death of Third World babies. Indeed, Drs. Ogra and Greene point to recent studies in several tropical countries that provide "strong evidence" for a protective role for breastfeeding, especially against enteric infections. They are careful to point out, however, that:

> Despite the wealth of available scientific data, significant gaps remain in the existing knowledge concerning infant nutrition, infection-malnutrition axis and immunobiologic aspects of human milk. Although breast milk is uniquely designed for the human infant, conclusive evidence of overwhelming nutritional advantages of human milk and breastfeeding over commercial milk products (which are properly reconstituted under sterile conditions) is not available at this time.[6]

It is obviously not necessary to wait for the "perfect" study to know that programs which promote breastfeeding are indeed

6. Pearay L. Ogra and Harry L. Greene, "Human Milk and Breastfeeding: An Update on the State of the Art," *Pediatric Research*, No. 16 (April 1982), p. 269.

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needed for the comparatively small percentage of poor women in developing countries who could breastfeed but do not. What is frequently overlooked, however, is that promoting breastfeeding will not be the most significant factor in reducing disease and death. The main source of contamination, disease, and death for the overwhelming majority of infants in developing countries is the filthy environment of poverty, which leads to the contamination of *all* foods eaten by infants. The notion that just because a weaning food is cooked, it is therefore sterile, needs reexamination. A recent study in Bangladesh showed, for example, high contamination levels in much of the food and water given to weaning age children; the proportion of food containing the pathogens was significantly associated with children's diarrhea. Several writers have noted in this connection that the same contaminated water that is used with breast-milk substitutes has also been mixed with weaning foods.

Until the recent objective reviews by the American pediatric community, the debate concerning whether and how much breastfeeding protects against disease and death in the developed world had been characterized by the same lack of attention to these methodological problems in study design. A case in point is a 1981 petition from the San Francisco social advocacy law firm Public Advocates, Inc., to the United States Food and Drug Administration and Department of Health and Human Services. In their case for breastfeeding, the law firm cites all the studies in developed countries which claim less disease in breastfed versus bottlefed infants but does not include any critical review of their weaknesses. The petition fails to discuss (with one exception) the studies which claim to show no significant differences between breast and bottlefed infants. One sincerely hopes that the latest scientific papers by the American pediatric groups, and a long-overdue review of scientific evidence presently underway by HHS, will provide a middle ground between the petition's claims and the industry response to them. The importance of the subject matter demands that careful epidemiological and statistical critiques of *all* the studies be conducted by groups other than industry and breastfeeding activists.

Is Mother's Milk the Perfect Food?

"Human milk is unquestionably a superb food for infants. However, notwithstanding exuberant testimonials to the advantages of breastfeeding," Samuel Fomon, pediatrician and fore-

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most U.S. authority on infant nutrition, wrote in *The New England Journal of Medicine*, "human milk is neither a perfect nor a complete food."[7] Lack of sufficient Vitamin D resulting in rickets has been, and continues to be, reported, particularly in dark-skinned women. Deficiencies of pyridoxine, thiamine, and Vitamin B_{12} have also been reported in breastfed infants.

In developing countries there is the added possibility of maternal malnutrition. The evidence here remains inadequate. However, the notion that successful breastfeeding is possible across a wide variation of mothers' nutritional levels is based primarily on general comparisons, not on systematic studies which have determined a mother's nutritional level, her milk output, and then the growth of her baby. Such data, although sparse, suggest that maternal malnutrition may significantly affect not only a mother's milk but her baby's growth as well.

In their statement cited earlier, Drs. Ogra and Greene explain that "insufficient milk syndrome and breastfeeding failure is a common experience in all parts of the world." This has also been discussed by both anthropologists and nutritionists and appears to be associated with urban areas and a change towards earlier mixed feeding (both breast and complementary foods) rather than a complete switch to artificial feeding. Dr. John Waterlow examined seventeen breastfeeding populations in developing countries. In a paper published in *The Lancet,* he concluded that the babies' growth rate declined between three and four months, often even earlier, and suggested that this was related to mothers' beliefs that they did not have enough milk for feeding purposes.[8]

On this subject practically every study (including those made by WHO) that asked mothers why they stopped breastfeeding or why they introduced supplementary foods, reported that the vast majority of women gave "insufficient milk" or similar problems as their explanation. Whether true or not, the majority of Third World mothers who stop breastfeeding apparently believe this. The WHO study shows that from 10 to 50 percent of mothers introduced complementary food as early as two or three months into the feeding regimen of their babies.

7. Samuel J. Fomon and Ronald G. Strauss, "Nutrient Deficiencies in Breast-Fed Infants," *The New England Journal of Medicine*, Vol. 299, No. 7 (August 17, 1978), p. 356.

8. John C. Waterlow, Ann Ashworth, Mary Griffiths, "Faltering in Infant Growth in Less-Developed Countries," *The Lancet*, Vol. 2, No. 8205 (November 29, 1980), pp. 1176–1177.

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The UNICEF breastfeeding information sheet claims that "at least 98 out of every 100 women can breastfeed successfully, *if* they want to and *if* they receive some basic support and information about the process." Since UNICEF goes on to discuss psychological anxieties and accompanying lactation failure, such "basic support" apparently encompasses psychiatric counseling rather than simply the high quality protein and additional calories which could conceivably enable "98 out of every 100 women (to) breastfeed successfully." It is not clear in this connection whether giving a mother additional food during breastfeeding will increase milk supply adequately; it may be too late at this point. The idea that "supplementing" a poor mother in a developing country will prove more successful than resorting to breast-milk substitutes for her baby when growth falters, in short, is unproven and perhaps unlikely. At the very least it requires further field research.

Most proponents of the WHO code have also failed to emphasize the greater relative importance of weaning foods and maternal nutrition to the entire process of infant feeding. One of the few who addressed this point, Dr. Nevin Scrimshaw, Director of the International Nutrition Program at M.I.T. wrote: "Most developing country infants are breastfed during the critical months of life. They become malnourished later because of inadequate complementary feeding practices. It follows, then, for these infants, improvements in growth and development and reduction of morbidity and mortality do not depend on persuading mothers to initiate breastfeeding. Rather, they demand measures that will increase the lactation capacity of mothers and the practicality of their continuing breastfeeding, assure appropriate complementary feeding, and lead to an eventual fitting termination of the weaning process."

The added problem of low birth-weight (LBW) infants in developing countries illustrates the difficulty in making broad generalizations and trying to regulate and legislate infant feeding. In their review of breastfeeding, Drs. Ogra and Greene discussed the complexity of this area: "Formula feeds appear to offer the advantage of enhanced growth and weight gain for an LBW infant; however, cow's milk, although having higher protein and a higher calorie load, may not provide sufficient amount of amino acids required by the LBW infant. Such feeding may also promote fluid and electrolyte imbalance." Two other authors writing in *The Lancet,* José Villar, and José Belizone, examined the question of whether LBW infants (in some Third World countries as high as

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30 to 40 percent of births) can thrive when fed exclusively on an undernourished mother's milk. They concluded: "Breastfeeding alone neither corrects malnutrition nor modifies its basic causes. When the infant is already malnourished at birth, as are about 40 percent in developing countries, breastfeeding alone during the first four months of life is unlikely to provide adequate nutrition."[9]

These questions of insufficient milk and lactation failure, complementary foods with breastmilk, and special problems of LBW babies are complicated, unsettled issues. They require much more discussion and debate than was apparent in the development and final version of the WHO code. It is vitally important to recognize these factors so that breastfeeding promotion programs can take these real problems of infant feeding into account.

Do Promotional Practices Contribute Significantly to a Mother's Decision to Bottlefeed?

The assumption that they do has little scientific evidence to support it. Those who brought forth evidence referred primarily to four studies, two of which did not even examine the question.

The first study in Baguio City, the Philippines, involved some 10,000 babies whose progress was followed from 1973 to 1976. This project encouraged more breastfeeding by reducing and ultimately eliminating infant formula from the hospital by simply returning babies to their mothers instead of separating them after birth—a hospital practice known as rooming-in. No published paper was available on this research either before or during the peak of the controversy, although the project director, Dr. Clavano, did discuss it in brief verbal testimony at the 1978 hearings before the U.S. Senate on marketing and promotion of infant formula in developing nations. Dr. Clavano, who referred to her report as a "working paper" and "resume," testified that they "did not change anything, except that we brought the babies back to their mothers," so they could be breastfed instead of bottlefed in the hospital.[10] For those disadvantaged Third World mothers who are fortunate enough to deliver their babies in hospitals or clinics, the Baguio General Hospital project is an important one.

9. José Villar and José M. Belizan, "Breastfeeding in Developing Countries," *The Lancet*, (September 19, 1981), p. 623.

10. Navidad Clavano, "Marketing and Promotion of Infant Formula in the Developing Nations, 1978," Hearing before the Subcommittee on Health and Scientific Research of the Committee on Human Resources, U.S. Senate (May 23, 1978), p. 11.

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Apparent dramatic declines in infant morbidity and mortality were achieved by educating medical staff and mothers on the importance of breastfeeding and by modifying hospital practices to allow for the rooming-in of infants after birth. From the few writings now available on this research, however, it did not isolate and study the effects of corporate sales and promotional practices.

The description of the second study in support of this assumption consisted of two unpublished papers which reported results of research on 625 infant/mother pairs in Puriscal, Costa Rica, from 1979 to 1980. This project, like the one in the Philippines, reported increases in breastfeeding and substantial reductions of morbidity and mortality. The study consisted of the same rooming-in procedure done in the Philippines, as well as other breastfeeding education efforts both in the hospital and through home visits. This project also appears to be a very promising effort in breastfeeding promotion through changes in hospital practices and follow-up with mothers among either a population where some 97 percent of births are in hospital and maternities, or in traditional study villages in Costa Rica where virtually all births occur in the home. While the study investigators assume that the promotion of processed cow's milk by both the medical and commercial establishments accounts for the decline in breastfeeding in Costa Rica, they do not examine or test this assumption.

A third study in Papua New Guinea, frequently cited by pro-code health professionals, was reported (without details on study methodology or statistical tests) in *Nutrition and Development*[11] and was mentioned in a letter to the editor that appeared in *The Lancet*[12] and that included some additional details. The study measured the percentage of breastfeeding and the percentage of malnourished children before and after legislation banning both advertising of milks for bottlefeeding and the sale of baby bottles was introduced in Papua New Guinea. As a result of the legislation, now a bottle can be obtained only from a registered pharmacist when a mother obtains a prescription signed by a registered health worker. In a statement in *Pediatrics* prepared by Dr. Barbara Starfield for the Ambulatory Pediatric Association and signed by its board of directors, she reported that as a result of banning advertising and

11. John Biddulph, "Impact of Legislation Restricting the Availability of Feeding Bottles in Papua, New Guinea," *Nutrition and Development*, Vol. 3, No. 2 (1980), pp. 4–8.

12. Julian Lambert, James Aidou, Barampo Ameuo, et al, "Bottlefeeding and the Law in Papua, New Guinea," *The Lancet*, (July 21, 1979), 155.

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bottles in Papua New Guinea "breastfeeding increased from 65 to 80% and by 1980 there was a statistically significant association with decreased incidence of gastroenteritis and malnutrition."[13] In their letter to *The Lancet,* however, the authors of the study wrote: "Although there was a trend for higher weight-for-age in the 1979 survey, this trend did not quite reach statistical significance." Moreover, neither *The Lancet* letter nor the *Nutrition and Development* article reported that gastroenteritis (measured in the study by admissions to one hospital) was "statistically significantly" associated with changes in breastfeeding.

What this research *does* show is that there has been an increase in breastfeeding in the capital city of Papua New Guinea. This is an encouraging achievement by a government which is obviously committed to the welfare of infants and young children.[14] To what extent this increase is attributable to the restriction of advertising —a company marketing practice—or to the restriction of baby bottles—not a company marketing practice—is not clear from the available data. The extent of an alleged flourishing black market in baby bottles is also unknown, although the study did determine that of the eleven women using bottles, only one had been illegally obtained.

The fourth study was the one most frequently cited in support of claims that promotional practices do affect mothers' feeding choices. This unpublished study, conducted by the São Paulo School of Medicine in Brazil in 1979, was available only in executive summary form at the height of the controversy in 1981, since it had not been officially translated from Portuguese to English.

Its authors are concerned about excessive corporate influence on the Brazilian medical profession in the form of providing scientific meetings, courses, and materials for pediatricians. While

13. Board of Directors of The Ambulatory Pediatric Association Statement, "The World Health Organization Code of Marketing of Breastmilk Substitutes," *Pediatrics*, Vol. 68, No. 3 (September 1981).

14. Third World commitment to this or any other development problem is the least discussed but probably most important constraint to the health and survival of its infants. At present only 6 percent of countries who voted for the code have adopted any version of it and only 25 percent are reported to be in the process of developing a code. According to a recent WHO progress report, European and Scandinavian countries are either drafting or simply continuing "voluntary agreements" between industry and governments or encouraging "industry self-regulation"—quite different from the WHO code's emphasis on government controls and national legislation.

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there may be some truth in this, such opinions have little to do with the text and tables of the study. The reported result that only 50 percent of doctors discuss breastfeeding with mothers could be indirectly influenced by companies' contacts with doctors, but could just as easily be affected by the reported appalling lack of nutrition instruction for these pediatricians. The authors cited a separate study which claimed that some 80 percent of pediatric residents in São Paulo received little or no nutrition education in their medical school training. While the authors *believed* that physicians were encouraging mothers to bottlefeed, the study data showed that only 5 percent of mothers *said* they bottlefed because of medical intervention. Eighty-four percent gave reasons of insufficient quantity and quality of milk for switching to the bottle.

This study dealt only indirectly with formula companies' advertising. The authors did look at advertising expenditures over time for broad food categories but had no separate breakdown for infant formula. In one case, they did have information on a particular kind of milk and the percentage of their own survey group consuming that milk. They cited an intensive advertising campaign for this milk but their data showed that *it was not consumed at all by the low income families they studied.* The study also pointed to inordinate increases in advertising of milk and milk products between 1974 and 1979, but the study data showed that there was no increase in bottlefeeding from 1974 to 1979.

In sum, this research—the most quoted and most important study used to formulate the WHO code—is replete with conflicting observations, equivocal results, and subjective interpretations. Moreover, it contains much evidence that contradicts the authors' conclusions. Yet neither the media nor the Deputy Assistant Secretary for International Health, John Bryant, took note of these serious flaws, even though Dr. Bryant used the study as evidence to support the conclusion that promotional practice was the cause of decreased breastfeeding. Just before the U.S. vote on the code, the *Washington Post* published a half-page spread concentrating on only one small part of the study. That was the portion that showed 9 percent of breastfed babies were malnourished as compared to 32 percent of bottlefed babies. The 9 percent, however, represented only *one* of 11 babies. This small cohort was compared to a much larger cohort of 143 bottlefed babies, with no information as to the comparability of the groups with respect to the health and socioeconomic status of the mothers or to the health of the infants.

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One of the few studies that did gather data directly related to the question of the impact of promotional practices on breastfeeding was that carried out by the WHO. The data showed that there was no association between a mother's receiving free infant formula samples and whether she breastfed or bottlefed later. Pro-code supporters dispute this finding, saying that the study was not designed to address this question. The WHO report makes the same disclaimer but notes disingenuously that "where the level of such advertising or distribution was high, the prevalence of breastfeeding was low." Writing in *Reason*, James Hickel called attention to the WHO failure to compare information on the extent of advertising in a country with the figures on breastfeeding and bottlefeeding.[15] By drawing such a "missing chart" the author makes some startling observations. For example, in Nigeria and India, both countries with intensive advertising in urban areas, breastfeeding among urban poor was very high at the age of nine months (100 percent and 95 percent respectively). In Guatemala and the Philippines, other countries with intensive advertising, the majority of urban poor and rural poor women continued to breastfeed at the six-month mark and nine months as well (with the exception of one subcategory). The lowest percentages of women breastfeeding at nine months were in Hungary and Sweden where advertising was virtually nonexistent.

In sum, of the four studies most frequently cited to support the key assumption of the infant formula marketing code, two had little or nothing to do with the assumption. Of the remaining two studies, one did not scientifically examine the question *and* demonstrated results that conflicted with the author's opinions. The other did show an increase in breastfeeding but proved neither that banning formula advertising was the single or even the major cause, nor that there was a corresponding improvement in infant nutritional status.

All three U.S. pediatric organizations have stated that the evidence is not conclusive to support the claim that samples provided to mothers in hospitals will influence their infant feeding choice. In their policy statement the AAP points out that, in the United States, the abandonment of breastfeeding began in the earlier part of this century before the infant formula industry was well developed. The renewal of breastfeeding occurred at a time when

15. James Hickel, "Infant Formula: WHO Mixes It Up," *Reason* (December 1981), p. 42.

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the industry was well-developed and actively promoting its products. The AAP concludes from this: "It appears that promotion by formula companies is more likely to follow social change than to lead it."

The Code and its Consequences

Even though the code is characterized by some distorted and inadequately proven premises, the fact that even a small percentage of poor Third World mothers bottlefeed and that there has been public advertising in the past (with some violations apparently still going on) means that some kind of guidelines are in order. Even the majority of infant formula companies believe this. They acted upon it when they wrote their own industry codes and regulations which predate the WHO code.

The WHO code reiterated most of the points from earlier industry codes and practices and specifically prohibited any use of milk or mothercraft personnel. The code still allowed for free samples to health professionals and free supplies to institutions. Also, scientific and factual information could still be provided by companies to health professionals. One new element in the debate was that the WHO code included all infant and young child foods as well as infant formula. Whether governments will interpret this to mean that such excellent foods, complementary to breast-milk such as Incaparina in Central America and Triposha in Sri Lanka, cannot be introduced to the public, however, remains to be seen. But the WHO code is supposed to be only a recommendation to governments. Is there, then, any real harm in it?

The disturbing and possibly harmful aspects of the code lie less in specific provisions than in its omission of a balanced discussion of available scientific evidence and the emotional climate created by many of its supporters. U.S. pediatric organizations criticized the code's overemphasis on the regulation of marketing practices —a single, and perhaps the least important, aspect of the infant feeding problem. Another serious area of omission is the code's lack of discussion or guidance on what a poor Third World mother should do when she cannot breastfeed and obviously cannot afford an expensive infant formula. The aim of the code, as found in Article 1, is to help contribute to safe and adequate nutrition for infants both by promoting breastfeeding and "by ensuring the proper use of breast-milk substitutes when these are necessary." However, there is no mention, even briefly, of meth-

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ods of managing lactation failure or basic considerations in choice and preparation of breast-milk substitutes.

One type of milk is singled out, however, for comment. Article 9.3 makes the blanket statement that sweetened condensed milk is not suitable for infant feeding. Yet Dr. George Graham, pediatrician and nutritionist, testified before Congress as to how "Sweetened condensed milk is very suitable for infant feeding" especially in developing countries where "it may well be the safest and least expensive substitute for breastmilk when one is needed...Sweetened condensed milk, because the large addition of cane sugar increases its osmolality and its resistance to bacterial proliferation, was used with success in infant feeding..." Thus, the code totally bans a product, less expensive than infant formula, that can be stored after opening without refrigeration.

The code does recognize a legitimate need for infant formulas for some mothers, even though by banning sweetened condensed milk and not discussing alternatives, there is the implied assumption that someone or some agency will provide the expensive infant formula for poor women. The highly charged debate on the issue has prevented even this on one occasion. In 1978 the then Egyptian Minister of Health, Mamdouh Gabr, pediatrician and nutritionist, requested infant formula under U.S. foreign aid to be given (i.e. subsidized) to those mothers whose milk supply was inadequate—either because of malnutrition, use of oral contraceptives, or work away from home. His request was denied by AID for the real harm that could befall children whose mothers mixed it inappropriately and because "the proposed purchase could unleash a torrent of public and congressional criticism of AID." One can only hope that health and nutrition workers in the field will be less skittish and image-conscious than U.S. government bureaucrats and help mothers obtain and hygienically prepare breast-milk substitutes when they need them. What is sad is that it is the disadvantaged babies in developing countries who are the victims of shoddy research and public relations defensiveness.

The notion, given credence by the code and many of its supporters, that millions of lives can be saved by regulating promotional practices, i.e., implementing the WHO code, and thus achieving universal breastfeeding, not only ignores some scientifically unsound premises of the code but assumes that breastfeeding can almost always succeed in adequately nurturing Third World infants. This is another unproven premise. The WHO code states "Breast-

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feeding is an unequalled way of providing ideal food for the health, growth and development of infants." However, as Dr. George Graham testified: "If this statement had been qualified by indicating 'successful' breastfeeding by well-nourished mothers, it would have been unobjectionable. By not recognizing the many failures of breastfeeding, it becomes a many-times repeated over statement with a significant potential for unfortunate consequences. Unsophisticated health workers and mothers will be led to continue exclusive inadequate breastfeeding." One not-so-unsophisticated Third World director of Maternal and Child Health Services expressed his concern to an AID project director about a proposed campaign to promote breastfeeding in the rural areas of his country. Since some 95 percent of women there were already breastfeeding, he worried that the message might be interpreted by mothers to mean that breastfeeding is all they should do. They might then delay unnecessarily the introduction of needed complementary foods.

Given the importance of infant feeding to survival, it is evident that some kind of regulation of infant formula promotion and distribution is necessary. This has been the tradition in the developed countries since the early part of the century—through industry and medical profession voluntary agreements and industry self-regulation. But if the distorted premises and flawed analyses supporting the WHO code are the best results that can be obtained from some of the best specialized agencies (WHO and UNICEF), enlisting both industry and parts of the scientific community, then we should perhaps be more skeptical about arriving at any global bans and regulations for the world's many other social and economic problems.

The saddest result of the entire controversy has been the tremendous diversion of time and resources from the more serious work at hand. One hopes that international health and nutrition workers will concentrate on the better understood and documented reasons for infant malnutrition and death—improving sanitation and water, providing housing and electricity, preventive health measures, and appropriate weaning foods—while at the same time promoting breastfeeding and helping to eliminate any abuses of infant formula promotion or use. One hopes they will improve upon the careless and misleading use of statistics, false logic, and blatant partisanship that has characterized the infant formula debate.

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National Commissions: Preaching in the Garb of Analysis

SIMON ROTTENBERG

What are National Commissions *for*? The respectable, official reply would be that they are appointed to make a thorough, comprehensive, and unbiased examination of an issue—or issues—of national importance, and to propose appropriate recommendations for public policy. Such commissions in recent years have devoted their attention to topics as various as ghetto riots, the family, and national goals. A public choice theorist or an old-fashioned cynic would contest this view. He would argue that one purpose of such bodies is to remove an embarrassing or thorny item from the political agenda and postpone any decision on it for some future government. As a British critic once remarked, a commission will "take minutes and waste years." On that view a commission is a substitute for action.

Eventually, of course, some action must result in the form of the commission's report. Indeed, the Chairman of President Carter's Commission on the National Agenda, when explaining what his commission would do, stated that it would "produce a written document that people would read." That turned out to be a shade ambitious. The report was produced certainly, but it is far from certain that people read it. Perhaps the national agenda was not a hot political topic. But that raises the question: What if the commission is dealt a hot political topic and is expected to investigate and consider it in an unbiased fashion and to make recommendations concerning it? To discover that, let us examine the progress of the Minimum Wage Study Commission, which was created by the Congress in 1977 by Public Law 95-151 to "help resolve the many controversial issues that have surrounded the federal minimum wage and overtime requirements since their origin in the Fair Labor Standards Act of 1938."[1]

> Congress had specified twelve topics for study, including the beneficial effects of the minimum wage, including its effect

1. U.S. Minimum Wage Study Commission, *Report*, Washington, D.C., Government Printing Office, 1981, vol. 1, p. xiii.

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> in ameliorating poverty among working citizens; the inflationary impact (if any) of increases in the minimum wage; the economic consequences (if any) of authorizing an automatic increase in the (minimum wage) rate on the basis of an increase in a wage, price, or other index; the employment and unemployment effects (if any) of providing a different minimum wage rate for youth; the employment effects (if any) of the minimum wage; the exemptions from the requirements of the Act; the relationship (if any) between federal minimum wage rates and public assistance programs; noncompliance with the Act; and the demographic profile of minimum wage workers.[2]

To cope with this formidable task, eight members were nominated by the Departments of Agriculture, Commerce, Labor, and Health, Education, and Welfare. They were two academics, two trade unionists, a retail merchant, a consumer advocate, and a producer of grain and pork. The chairman, James G. O'Hara, was a practicing attorney who had been a nine-term Democratic member of the House of Representatives, representing a Michigan district, and a member of the House Committee on Education and Labor. In addition, a professional staff was recruited, outside contractors were hired to prepare reports, and discussants were asked to prepare commentaries on the contractors' reports. No less than $17 million was spent on this enterprise. In the upshot, a seven-volume report was issued, of which the first volume was the Commission's report, and the remainder reproduced working papers by the Commission staff, reports of the contractors, and commentaries by discussants.

If the Commission members were expecting some original theoretical or empirical evaluation of the minimum wage, they were disappointed. By and large, the contractors' reports and the staff working papers reproduced and reiterated the standard findings of the professional literature of economics: namely, that the regulation of wages by the state is an inefficient instrument for the improvement of the conditions of the working poor, and that such regulation has adverse effects upon economic performance.

The evidence for this professional consensus is overwhelming. Almost any economics textbook, however randomly selected, contains at least a few sentences that express unfavorable judgment

2. *Ibid.*, pp. xiii–xiv.

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upon minimum wage legislation. The textbooks express the distilled judgment of the profession.[3]

Early expression of this adverse opinion appears in the literature of classical economics. M'Culloch wrote:

> There have been, and still are, persons calling themselves social reformers and friends to the poor, who propose...that the employment and the wages of every man should be determined by agents nominated by the government for the purpose!...The abuses to which the adoption of such a scheme would infallibly lead would be such that it could not be maintained for any considerable period; if it were, it would fill the land with robbery, injustice, and ruin.[4]

J. S. Mill was only slightly more circumspect:

> [S]ome have proposed to fix a minimum of wages, leaving the variations above that point to be adjusted by competition... [I]f law or opinion succeeds in fixing wages above (the rate which results from competition), some laborers are kept out of employment.[5]

The modern and sophisticated treatment of minimum wage laws and their effects begins with the classic paper by Professor George

3. See, for example, G. L. Bach, *Economics*, 10th edition (Englewood Cliffs, N.J.: Prentice-Hall), 1980, p. 526; P. Samuelson, *Economics*, 11th edition (New York: McGraw-Hill), 1980, pp. 369-370; R. G. Lipsey, *An Introduction to Positive Economics* (London: Weidenfeld and Niconson), 1963, pp. 308-309; A. A. Alchian and W. P. Allen, *University Economics* (Belmont, CA: Wadsworth), 1964, pp. 485-486; R. Attiyeh et al., *Basic Economics* (Englewood Cliffs, N.J.: Prentice-Hall), 1973, pp. 87-88; F. Benham, *Economics, A General Introduction* (London: Sir Issac Pitman & Sons), 1960, p. 318; R. T. Bye, *Principles of Economics*, 5th edition (New York: Appleton-Century-Crofts), 1956, p. 489; S. T. Call and W. L. Holahan, *Microeconomics* (Belmont, CA: Wadsworth), 1980, pp. 420, 433; R. Campbell, *People and Markets, An Introduction to Economics* (Menlo Park, CA: Benjamin/Cummings), 1978, pp. 268-271; R. Chisholm and M. McCarty, *Principles of Economics* (Glenview, Ill.: Scott, Foresman), 1978, p. 340; C. E. Ferguson and J. P. Gould, *Microeconomic Theory*, 4th edition (Homewood, Ill.: Richard D. Irwin), 1975, pp. 470-472; J. E. Hibdon, *Price and Welfare Theory* (New York: McGraw-Hill), 1969, pp. 378-380; R. G. Lipsey and P. O. Steiner, *Economics*, 4th edition (New York: Harper and Row), 1975, pp. 108-110; E. Mansfield, *Microeconomics, Theory and Applications*, 3rd edition (New York: W. W. Norton), 1979, p. 383; W. Nicholson, *Intermediate Microeconomics and its Applications*, 2nd edition (Hinsdale, Ill.: Dryden Press, 1978, pp. 380-383.

4. J. R. M'Culloch, *The Principles of Political Economy*, The Fourth Edition, (Edinburgh: Adam and Charles Black), 1849, p. 395.

5. J. S. Mill, *Principles of Political Economy*, 2 vols. (Boston: Charles C. Little and James Brown), 1848, vol. I, Chap. XII, "Of Popular Remedies for Low Wages," pp. 430-432.

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Stigler, published in 1946.[6] That paper argued that a minimum wage law would cause some workers to be discharged, that discharged workers would move either to unemployment or to other occupations where they would have lower earnings, that costs of production would be enlarged, and that the output of the economy would be diminished. The wage rate, he continued, is an unreliable index of the condition of family life and an inefficient measure of poverty; managing the wage rate through law is, therefore, an "inept device for combatting poverty, even for those who succeed in retaining employment."[7]

Following Professor Stigler, innumerable papers on minimum wage laws and their effects have appeared in the professional journals, in volumes of collected papers, in monographs, and in doctoral dissertations. The literature almost uniformly accepts the standard hypotheses derived from the theory of price, and much of it is devoted to the empirical estimation of the effects of the minimum wage law.[8] The empirical research systematically confirms the predictions of the theory.

The implications for legal minimum wages deriving from price theory are clear-cut. The quantity of labor that employers use is inverse to its price. If government intervenes to enforce a wage

6. G. J. Stigler, "The Economics of Minimum Wage Legislation", in *American Economic Review*, vol. XXXVI, no. 3, June 1946, p. 358ff.

7. *Ibid.*, p. 363.

8. See, for example, J. Peterson and C. Stewart, *Employment Effects of Minimum Wages* (Washington, D.C.: American Enterprise Institute), 1969; J. Mincer, "Unemployment Effects of Minimum Wages," in *Journal of Political Economy*, vol. 84, no. 4, part 2, August 1976, pp. 87 ff.; J. Ragan, "Minimum Wages and Youth Labor Markets", in *Review of Economics and Statistics*, vol. 59, no. 2, May 1977, pp. 129 ff.; E. M. Gramlich, *Impact of Minimum Wages on Other Wages and Family Income*, Brookings Papers on Economic Activity, no. 2 (Washington, D.C.: Brookings Institution), 1976, pp. 409 ff.; F. Welch and J. Cunningham, "Effects of Minimum Wages on the Level and Age Composition of Youth Employment," in *Review of Economics and Statistics*, vol. 60, no. 1, February 1978, pp. 140 ff.; M. Kosters and F. Welch, "The Effects of Minimum Wages on the Distribution of Changes in Aggregate Employment", in *American Economic Review*, vol. 62, no. 3, June 1972, pp. 323 ff.; J. P. Matilla, "The Impact of Minimum Wages on Teenage Schooling and on the Part-Time/Full-time Employment of Youths," in S. Rottenberg, ed, *The Economics of Legal Minimum Wages*, (Washington, D.C.: American Enterprise Institute), 1981, pp. 61 ff.; P. Linneman, *The Economic Impacts of Minimum Wage Laws: A New Look at an Old Question* (Chicago: University of Chicago, Center for the Study of the Economy and the State), April 1980, mimeographed; and T. G. Moore, "The Effect of Minimum Wages on Teenage Unemployment Rates", in *Journal of Political Economy*, vol. 79, July/Aug. 1976, pp. 897 ff.

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that is higher than that which would appear in competitive markets, a smaller quantity of labor will be employed in the industries in which this higher wage is enforced. If there are industries not covered by the law, employment of labor there will increase. The larger the fraction of the economy that is subject to the law, the larger the number will be of displaced workers who will become unemployed. Those who will be most adversely affected are low-wage workers, who systematically include young people, the elderly, and the handicapped.

Secondly, if the state alters the price structure of commodities and services, it induces inefficient combinations of resources and thus causes less output to be secured. This lesser output tends to intensify poverty and to make people worse off. In competitive labor markets, there are efficient specialization and division of labor and exchange. Where the state enforces a uniform price for labor of some class—which is what a national legal minimum wage does—this efficient division of labor tends to be frustrated. Economic activity is distorted and output diminished.

Thirdly, differences in wages and earnings among workers at different levels of skill provide an incentive system for investment in the acquisition of skill. If the structure of wages is compressed by minimum wage laws, those who survive the contraction of employment generated by them still suffer a reduced return on their investment in acquiring skill. Less investment in skill-acquisition can therefore be expected. The average quality of the labor force will consequently be diminished, with adverse effects upon output. Again, this will tend to increase poverty. Similarly, minimum wage laws also diminish the incentives for employers to provide on-the-job training to young workers by preventing employers from paying lower wages during the training period. Again, the result is less training, and the prospects of the workers' lifetime earnings are adversely affected.

Finally, the payments for labor services are some combination of cash and kind. Payments in kind consist, for instance, of the conditions under which work is done and of fringe benefits. Since the legal minimum wage regulates only the cash component of this basket, there will be a tendency for the noncash component of labor's remuneration to be diminished.

Does empirical research confirm the predictions generated by price theory? The published literature almost universally agrees that minimum wage laws generate disemployment. There are differences only over such questions as the magnitude of disem-

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ployment and the distribution of the disemployed among such alternatives as enrollment at school, employment in new occupations with lower returns, and unemployment.

Admittedly, there are aspects of the minimum wage law that are still relatively unstudied. They include the effects of the law upon the location of economic activity in both an inter-regional and an international context; upon the formation of human capital; upon the distribution of opportunity among the population; upon the composition of economic activity and the size-distribution of firms; upon work histories and lifetime employment patterns of individuals; upon the distribution of young workers among various employments; upon the seasonal nature of employment and casual employment; and upon such socially pathological phenomena as family instability and deviant behavior by the young.

Exploring the Known

Of course, the Minimum Wage Study Commission might have commissioned contractor and staff research on such topics in order to complement the existing literature and to assist it in formulating its recommendations. Its mandate included the study of "the beneficial effects of the minimum wage, including its effect in ameliorating poverty among working citizens." If we assume that such a provision implied a study of the effects of the minimum wage that are not beneficial and that aggravate poverty among working citizens, complementary research could certainly have been undertaken. The Commission might then have sought to be instructed by the already-large published materials in the professional literature, supplemented by the findings of new research on still thinly studied topics. Instead, the Commission set its professional staff and contractors to discover what was already known. Substantially, their research deals with the topics already extensively covered in the published literature and, not surprisingly, they come out, by and large, with the same results. Thus, Professors Boschen and Grossman found that "increases in the current or near-future Federal minimum wage appear to depress current employment in certain industries that probably have a high proportion of minimum wage workers and among teenagers, the demographic group that has the highest incidence of minimum wage workers."[9] Professor Pettengill found that "a minimum wage that

9. J. F. Boschen and H. I. Grossman, "The Federal Minimum Wage, Employment, and Inflation," in U.S. Minimum Wage Study Commission, *Report*, (Washington, D.C.: Government Printing Office), 1981, vol. VI, p. 19.

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covered all workers will cause a large (probably intolerable) amount of unemployment in the long run for all plausible values of the parameters'' of his model.[10] Professors Cox and Oaxaca found that the increase in federal minimum wages in 1974 diminished gross domestic product and wage and salary employment in the years immediately following the increase.[11] And Professors Brown and Kohen and Dr. Gilroy, reviewing the literature, found that both time-series and cross-section research results are broadly consistent ''with the basic received economic theory which holds that increases in the Federally mandated minimum wage result in decreased employment.''[12]

Professors Heckman and Sedlacek, investigating the effects of federal minimum wage legislation in a low-wage state, South Carolina, concluded that a 20 percent increase in the minimum wage makes approximately 81 percent of South Carolina workers worse off than before the change. They found, ''in particular...large disemployment effects due to minimum wage increases.''[13] Professor Hammermesh found that ''in private non-farm employment, and in manufacturing, services and retail trade [the three industries in which there are sufficient numbers of young employees to enable useful estimates to be produced], [there is] a significant negative relation between the effective minimum and relative employment... If anything,...the previous work has underestimated the impact of the minimum wage (on youth disemployment).''[14] And Professor Fleisher, commenting on the Hammermesh report, says that the evidence he provides shows that ''the estimated impact of minimum wage legislation on youth employment contained in the Hammermesh report is too small,'' because it takes account of the substitution effect of the legislation but ignores the scale of output effect.[15]

10. J. S. Pettengill, ''The Long Run Impact of a Minimum Wage on Employment and on the Wage Structure'', *Ibid.*, vol. VI, p. 64.

11. J. C. Cox and R. L. Oaxaca, ''Effects of Minimum Wage Policy on Inflation and on Output, Prices, Employment, and Real Wages by Industry,'' *Ibid.*, vol. VI, p. 195.

12. C. Brown, C. Gilroy, and A. Kohen, ''Effects of the Minimum Wage on Youth Employment and Unemployment,'' *Ibid.*, vol. V, p. 2.

13. J. Heckman and G. Sediacek, ''The Impact of the Minimum Wage on the Employment and Earnings of Workers in South Carolina,'' *Ibid.*, vol. V, p. 253.

14. D. Hammermesh, ''Employment Demand: the Minimum Wage and Labor Costs,'' *Ibid.*, vol. V, p. 27.

15. B. M. Fleisher, ''Comments,'' *Ibid.*, vol. V, p. 85.

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Professors Meyer and Wise found that "if there were no minimum wage, the number of out-of-school young men who are employed would be more than 6 percent higher than it is now" and that "the average wage paid to youth...is lower with the minimum than it would be without it."[16] Similarly, Professors Behrman, Taubman, and Sickles, investigating the income distribution effects of minimum wages, conclude that

> both the minimum wage rate and Fair Labor Standards Act coverage reduce the mean earnings for those with low education and (presumably) skill levels...There is practically no evidence that minimum wage rate provisions increase the earnings of (improve) the poverty position of the least educated...Moreover there is some evidence that these provisions increase unemployment and nonparticipation...The (usually stated) rationale or goal of the minimum wage system is to help the working poor receive a higher income. Our results suggest that this goal generally is not met and indeed that the system often harms the groups who are the intended beneficiaries...Thus the minimum wage policy appears to be a poor policy with effects that often have been misunderstood or misrepresented.[17]

On the same topic, Professors Johnson and Browning conclude that, because many low-wage workers are in high-income households and for other reasons,

> the additions to household income produced by increasing the minimum wage are spread quite evenly across the distribution of household income. Households in the lower half of the distribution receive only about one half of the total "benefits" of this policy. In terms of the share of total benefits accruing to low-income households, the minimum wage compares unfavorably with government transfer programs....Increasing the minimum wage redistributes income within income classes as well as across income classes. More than 80 percent of low-income households are harmed by the minimum wage.[18]

16. R. H. Meyer and D. A. Wise, "Discontinuous Distributions and Missing Persons: the Minimum Wage and Unemployed Youth," *Ibid.*, vol. V, p. 198.

17. J. R. Behrman, P. Taubman, and R. Sickles, "The Short- and Long-run Effects of Minimum Wages on the Distribution of Income," *Ibid.*, vol. VII, pp. 105-106.

18. W. R. Johnson and E. K. Browning, "Minimum Wages and the Distribution of Income," *Ibid.*, vol. VII, pp. 31-32.

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More evenhandedly, Professors Datcher and Loury report that increases in the minimum wage

> have had a positive effect on the earnings of older white men, a significant negative effect on teenage black and white women and little or no effect on other workers as a whole... Our results indicate that white families tend to benefit more from (minimum wage) increases than black families and that the principal avenue of this differential impact is the effect of the minimum on adult men...[R]aising the minimum wage is not an egalitarian policy from the point of view of raising the earnings of low income families relative to other groups. ...Overall, high income families benefit relatively more than low income families.[19]

Finally, Professor Kohen and Dr. Gilroy surveyed the published materials on the relationship between the minimum wage and income distribution and poverty. Their summary of the review says:

> Inasmuch as there is not a strong correlation between individual earnings and family income—with large numbers of minimum wage workers found among households at all income levels—the message from the body of empirical evidence is that the minimum wage has had small "beneficial" effects on the distribution of income. There are, however, other mechanisms which would be *more effective* in providing income support for individuals and families, such as direct federal government transfer payments or some variant of a negative income tax. (Italics added).[20]

In short, the research sponsored by the Minimum Wage Study Commission corroborated the evidence generated by earlier professional research that the minimum wage is not an effective instrument for the purpose of assuring an adequate standard of living for the country's working citizens. It reported that the minimum wage law depressed employment in industries in which low-wage workers and teenagers are concentrated, reduced the economy's output of commodities and services; made most workers worse off in a low-wage state; had adverse effects upon employment in manufacturing, in the services, and in retail trade; reduced the average

19. L. P. Datcher and G. C. Loury, "The Effect of Minimum Wage Legislation on the Distribution of Family Earnings Among Blacks and Whites," *Ibid.*, vol. VII, pp. 125-126, 149.

20. A. I. Kohen and C. I. Gilroy, "The Minimum Wage, Income Distribution, and Poverty", *Ibid.*, vol. VII, p. 25.

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earnings of young people and of those with low education and skill levels; did not spread income more equally; and made black families worse off relative to white families.

Old Dogma, New Tricks

One might therefore suppose that the Commission, confronted by this array of evidence marshalled by its own researchers, would have recommended strongly that the coverage of the Fair Labor Standards Act be compressed, that the level of the legal minimum wage be lowered, or at least that the current minimum wage be left unchanged, so that its adverse effects might be eroded as the general level of commodity prices rose with inflation. Policy changes such as these would seem to flow sensibly from the researchers' findings.

The Commission did not do so. Instead, it recommended that the level of the legal minimum wage be *raised* periodically by indexing it to the average wage paid in the economy, and that the coverage of the minimum wage law be *extended* by eliminating various classes of work that are now exempt from the Fair Labor Standards Act. It voted to "eliminate exemption" for employees of: independent wholesale or bulk distributors of petroleum products; tobacco handling incidental to auction sales; small retail trade and service establishments; custom manufacturing in exempt retail establishments; low-circulation newspapers; small telephone exchanges; buyers of poultry and dairy products; small town radio and television stations; automobile, truck, boat, aircraft and farm implement retail sales establishments; local delivery companies; farmer owned livestock auctions; and small country elevators. Finally, the Commission voted to exempt substitute houseparents in nonprofit educational institutions; employees of motion picture theaters; concessioners in national parks; homeworkers engaged in the making of wreaths; service-related workers in cotton gin and sugar processing establishments; cotton ginning employees; and sugar beet and cane processing employees.[21]

We can confidently predict, from our reading of the Commission's research, what the effects of the Commission's recommendations would be. Tying the minimum wage rate to an average wage index would make increases in rate levels, which are now constrained by Congressional debate, completely automatic. And indexed minimum wage rate increases might be larger—and ap-

21. *Ibid.*, Chapter 9, Recorded Votes, pp. 163 ff.

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pear with smaller lags—than legislated increases. Since the harm done by legal minimum wages is a partial positive function of rate level and of the fraction of the economy that is covered by the legislation, the Commission voted to extend and intensify the harm.

How and why did the majority of the Commission choose to ignore the findings of the researchers whom it had appointed? The Commission attempts to escape the policy consequences of analysis and empirical research by multiplying assumptions. Where a small set of postulates permitted operational hypotheses to be derived, a larger set permits any one of a number of outcomes, including mutually exclusive ones. Prediction is no longer possible, and what had been theoretical questions become transformed into empirical questions. Price theory (which the Commission Report sometimes calls "the simplest theory," sometimes "this simple theory," and sometimes puts between quotation marks—"theory"), which assumes maximizing behavior by all, tells us that "increasing the minimum wage reduces the employment of low-wage workers" in competitive labor markets. But, the Commission goes on, let us now assume that other economic actors—workers, for example—maximize, but firms do not. Firms do not search out responsible, punctual, and energetic employees, and they do not organize production efficiently, until a minimum wage or an increase in the minimum wage shocks them into maximizing behavior. Then, the "simple theory" suggests "that the minimum wage will reduce employment," but the theory based on multiplied assumptions says "that the minimum wage could increase employment, or decrease it, or have no effect."[22]

This rhetorical method, which the Commission employs to "reconcile" its research findings with its recommendations, violates elementary rules of logic, in particular the principle of sufficient reason known as Occam's Razor.[23] According to this principle, the simpler of two explanations of a phenomenon is to be preferred (as-

22. U.S. Minimum Wage Study Commission, *op. cit.*, vol. I, pp. 31-33.

23. The fourteenth-century English scholastic, William of Occam, postulated that plurality is not to be posited without necessity (*pluralitas non est ponenda sine necessitate*) and, in another form, that what can be explained by the assumption of fewer things is vainly explained by the assumption of more things (*frustra fit per plura quod potest fieri per pauciora*). Father Boehner points out that the form in which Occam's Razor usually appears: entities must not be multiplied without necessity (*entia non sunt multiplicanda sine necessitate*) does not seem to have been used by him. P. Boehner, *Ockham, Philosophical Writings* (Edinburgh, Thomas Nelson and Sons, 1957) p. xxi.

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suming of course that both explain observed facts equally well and yield equally valid predictions). For, while the more complicated theory may produce adequate results, or even the same results as the simpler theory, it is less satisfactory either because its complication is needless or because it does not generate operational predictions.

Sir Karl Popper, the distinguished philosopher of science, who served for many years as the Professor of Logic and Scientific Method at the University of London, explains the value of simplicity in the following way:

> "Simple statements are to be prized more highly than less simple ones *because they tell us more; because their empirical content is greater; and because they are better testable.*"[24]

Thus, Euclidian geometry is simpler than any non-Euclidian geometry. The hypothesis of the validity of a Euclidian light-ray geometry is more falsifiable than hypotheses drawn from non-Euclidian geometry. If the angles of a light-ray triangle are summed, any deviation from 180 degrees will falsify the Euclidian hypothesis; but the hypothesis derived from a Bolyai-Lobatschewski geometry is comparable with any sum of the angles not exceeding 180 degrees.[25]

The principle of sufficient reason, then, has been found by philosophers of science to be a powerful epistemological instrument, not because it is parsimonious, but because it is efficient in distinguishing true and false increments to knowledge. Standard price theory is consistent with Occam's Razor. It is based on a spare set of postulates. It assumes that humankind engages in rational, maximizing behavior in exercising choice in conditions of scarcity. Fundamentally, that is its only assumption. The theory is powerful because it permits a very large number of implications to be drawn from it, and because those implications are operational. That is to say, the implications of the theory are testable, and they are capable of being found to be false by the evidence of experience. The value of the theory is confirmed because the implications are frequently found to be consistent with empirically observed experience.

In the particular case of the minimum wage, as we have seen, the predictive implications of price theory are that minimum wage laws will adversely affect employment, output, and human capital

24. Karl R. Popper, *The Logic of Scientific Discovery* (New York: Basic Books, Inc., 1959) p. 142.
25. *Ibid.*, p. 144.

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formation, and that the adverse effects will fall most heavily upon the unschooled and unskilled. The research reveals that the implications are consistent with experience. There would seem to be no good reason whatsoever for departing from this established and often verified theory. But the Commission sought, by violating one of the most primitive rules of the method of scientific research, to escape the predictive implications of the theory of markets. Its errors, however, did not end there. As we have seen, the Commission's complicated theory generated the useless prediction that "the minimum wage could increase unemployment, or decrease it, or have no effect." Such predictions could not possibly be falsified by practice and are utterly useless as a guide to policy. What makes the Commission's conclusions still more ridiculous is that the overwhelming weight of empirical research serves to confirm the simple theory, including the research that the Commission had sponsored. The Commission solved this by the simple expedient of ignoring its own research.

Similarly, the Commission majority ignored the admonishments of one of its members who argued that its recommendations were not consistent with the findings of its staff and contractors' reports.[25] It is significant that neither of the academic economists who were members of the Commission voted in favor of the recommendation to index the legal minimum wage. Of all the Commission recommendations, it is this one that would do most harm.

But what led the majority of the Commission to engage in such logical contortions? We should perhaps remember that *some* workers and industries do benefit from the minimum wage.

Legal minimum wages are frequently an instrument employed by privileged classes of workers to enforce their privileged positions by preventing other classes of workers from entering their occupations and competing with them. Thus, minimum wages are often regressive in their effects.

Similarly, legal minimum wages are frequently employed as an instrument to prevent the reallocation of economic activity among regions by compelling labor in poorer regions to offer their serv-

26. "The evidence is now in, and the findings of dozens of major economic studies show that the damage done by the minimum wage has been far more severe than even the critics of forty years ago predicted. Indeed, the evidence against the minimum wage is so overwhelming that the only way the Commission's majority was able to recommend that it be retained was to ask us not to base any decisions on the facts." "Minority Report of Commissioner S. Warne Robinson," *Report, op. cit.*, vol. 1., p. 182.

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ices at a price that is not less than the price at which labor is offered in richer regions. This impedes the employment and occupational progress of workers in the poorer regions and helps better-off workers at the expense of worse-off workers. If the two trade unionists, the retail merchant, the producer of grain and pork, and the Michigan congressman were either representative of, or sympathetic to, the interests of these established groups, then their support is readily understandable. No one should be surprised by the existence of vested interests.

The Second Time as Farce

But there is also the matter of *ideological* interests. In a 1960 paper Professor Stigler discussed the social purpose of commissions formed by governments. "Why," he asks, "form commissions?"

> The most important answer...is that the commission is deemed an efficient instrument of propaganda. The many semi-unanimous voices will somehow sound louder in chorus than the sum of their individual efforts. The whole art of commissionmanship is to select honorable and disinterested members who will mostly agree with the position which the creators of the commission desire. This is not so difficult as it may sound, because most honorable and disinterested men of distinction (1) have no very definite ideas on most specific questions..., but (2) have definite, known sentiments and inclinations; and hence are predictable.[26]

It seems clear that, once the ideological set of the Commission was formed by the choice of those who would compose it, the main lines of its recommendations had been defined. This found unusually frank expression in the "additional individual views" of the Commission Chairman James G. O'Hara, when he discussed a suggested, lower minimum wage for young people (which the Commission rejected). "I believe," he said, "that the payment of a subminimum wage to a particular age group is so in conflict with...the requirements of social justice that it ought to be rejected as a policy option *even if* it would substantially reduce youth unemployment."[27] (italics added) The Chairman did not go on to explain how enlarged youth unemployment served the

27. G. J. Stigler, "The National Commission as an Instrument of Controlled Impartiality", in G. J. Stigler, *The Intellectual and the Market Place*, (New York: The Free Press of Glencoe), 1963, pp. 20–21.

28. U.S. Minimum Wage Study Commission, *op. cit.*, vol. I., p. 180.

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purposes of social justice. But it is worth noting that, by the normal canons of logic, such a premise is utterly impervious to empirical research.

The Minimum Wage Study Commission is a clear-cut case that confirms Professor Stigler's thesis. Sentiments and inclinations—not thoughtfulness or evidence—were controlling in the execution of its judgment. Indeed, it is so clear that the Commission's recommendations were predetermined by its composition that it is a source of wonder it put itself at risk by asking that economic research be done.

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Against Natural Rights*

ERNEST VAN DEN HAAG

Many eminent scholars have investigated the history of "natural law" and of its offspring, "natural rights." I intend merely to sketch a rough background for the argument to follow and do not expect to make a contribution to the historiography of these ideas.

Custom arises from history, tradition, and function. In early times especially, much of what had been customary for a long time was regarded as natural. It is this pseudoderivation which originally may have given rise to the notion of natural law. Explicitly legislated positive law, when it came into existence, was thought to articulate, apply, extend, and help enforce nature's law, where nature neglected to do so. If inconsistent with what was regarded as natural law—that is, ancient custom—positive law was thought incorrect and invalid.[1]

To allow the law of nature (and finally of its God) to be broken by the impious with impunity was thought to risk provoking nature's own sanctions or divine wrath, which might harm the whole community that included an unpunished wrongdoer.[2] Thus, it was believed that legal punishment of offenders against natural law, whether they offended knowingly or not, would be pre-emptive; and by punishing solely the actual offenders, legal punishment would be economical as well.[3]

Neither custom nor the law of nature originally had a distinctly moral content. Both were observed (in both senses) because they were believed to be backed by natural (later supernatural) power, itself scarcely distinguished from morality. When morality became differentiated from natural power, natural law acquired two different senses: (1) description of observed regularities; and (2) pre-

*This is a revised version of a paper first presented at a conference on natural law and natural rights in Santa Barbara (April 1982). The conference was generously supplied by the Liberty Fund (Indianapolis, Indiana).

1. Sophocles' tragedy *Antigone* clearly illustrates this point.
2. Sophocles' Theban Tragedies are among many illustrations of this belief.
3. In early times, liabilitty for offending nature did not necessarily imply personal guilt as it might now. Even "*scienter*" (action done willing or knowingly) was not required for guilt. The legal concept of "strict liability" thus actually was invented before personal guilt was required for liability.

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scription for human conduct. Unlike the former, the latter was vindicated by morality itself, by God, and by positive law as well.

Ever since natural law acquired these two meanings, philosophers have tried to explore the link between them. Their views have ranged widely. Some find identity between the two senses of natural law, or a relationship in which natural law is a necessary and/or a sufficient cause of moral law and totally determines it. Others find a loose limitation of the moral dimension or some influence on it by the natural law, or find that at least some moral rules are determined by nature. Still others, such as the Platonic Protagoras, or David Hume, find no prescriptive determination of moral law by natural law or by human nature. They believe that nature at most determines the limits, the setting, of moral problems by limiting possible human action, since "ought" implies "can," or, as the jurists have it, *ultra posse nemo obligatur* (no one is bound to do more than he can). But "can" does not imply "should." Nature only determines what we can, not what we ought to do: individuals and societies must make their own moral rules to narrow the wide range of possibilities nature presents us with, to decide how, whether, or which of the possibilities it offers should be used. Only the impossible is unnatural—and we obviously need not bother about it. The same range of opinion is found whether natural laws or natural rights are at issue.

Men often have conscious purposes even in their spontaneous actions.[4] We incline to ascribe purposes to others as well. Finally we tend to explain observed regularities in nature by attributing purposes to it. Thus, we projectively tend to impute motives and designs to the effects and correlations we actually observe. If the things observed are nonrational or inanimate,purpose may be ascribed to anthropomorphic spirits thought to animate them; or things are thought to be designed in order to fulfill inherent purposes. Ultimately everything may be believed to be part of a design imputed to nature or to its creator just as our own creations usually are designed for some purpose. Anthropomorphic projec-

4. From the observable purposefulness of our actions Alan Gewirth, by an odd though intriguing piece of reasoning, infers human rights: since we all may act purposefully we all have the right to the freedom and other necessary conditions required to achieve our purposes. Since our purpose, by definition, is our welfare, everybody has a right to it, for we can claim rights by our action for ourselves only if we grant them to others. Thus, if we do, or logically must, claim rights, we *eo ipso* get them and must grant that others have the same rights. Alan Gewirth, *Reason and Morality* (Chicago, 1978).

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tion thus leads us to conflate function and purpose so that effects are seen as telic or dystelic, conforming to natural law (purpose) or not, and rarely as merely ecbatic. Telic behavior, behavior according natural law, is thought to be nature's command, which we are bound to obey, lest nature be offended and we be offenders.

That much is held in common by religions ranging from animism to secular humanism. Although there are numerous variations on the tune, there is a common belief that the moral rules stemming from natural law are nonarbitrary, invariable, binding, and universal. They are ordained or, at least, justified by some prescriptive authority, nature, God, or reason itself and not impelled merely by the individual or collective interest or will.[5] Moral rules are thought to be in the nature of things so that the rules could not be different and correct. Natural law philosophers differ on whether reason merely discovers or endogenously produces natural moral laws and, in the former case, on whether the moral laws are due to an exogenous creator. But this difference becomes relevant only once prescriptive natural law is accepted.

From Antiquity to the Twentieth Century

Zeno of Citium is commonly believed to have first articulated the notion of natural law in the mandatory prescriptive sense. His Stoic followers came near to identifying natural law and reason. The Roman lawyers inherited the idea found explicitly in Cicero. Natural law was summarized later by Domitianus Ulpianus: *honeste vive*; *neminem laede*; *suum cuique tribue*: "do not cheat; do not harm anyone gratuitously; do not take from another (or, do give to each) what he is entitled to."[6]

The notion of natural law was taken over from the Romans by the Church fathers and schoolmen. Thomas Aquinas held that natural law binds all persons, since it is recognized by the light of reason alone, in contrast to divine law, which binds only the faithful to whom it has been revealed. To this day proponents of natural rights, such as Alan Gewirth or Ronald Dworkin, think these rights are morally binding on all, inherent in things, and recognized by *recta ratio* (right reason), usually their own. In modern

5. Where moral rules are not conceived as invariable and universal, one wonders to what extent they should be defined as rules. Where they are thought to be dictated by reason, it is usually argued that not to justify them is inconsistent and not to follow them is to behave incoherently.

6. My interpretation is deliberately free, but, I think, justifiable.

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times various pseudonyms for natural law or natural rights are used (such as moral rights or human rights), but their true identity, although obscure, is scarcely disguised.

In the seventeenth century, most of the explicitly metaphysical and teleological baggage of natural law began to be thrown overboard. Yet the conflation of the descriptive with the prescriptive remained. The changes made by Hugo Grotius or John Locke seem largely cosmetic. Despite a brave and immensely productive try, I do not think that even Immanuel Kant managed to overcome the hurdles to which David Hume had drawn attention, although he perhaps most radically replaced nature with inherent and *a priori* reason, its categories and imperatives.[7]

Attempts to derive morality and rights from nature have not ceased. The moral norms attributed to nature vary, but the difficulties of derivation remain. Natural law as moral mandate continues to be conflated with necessary conditions (observed regularities) of human and social existence.

Thus, H. L. A. Hart's halfhearted attempt to establish *The Minimum Content of Natural Law* would be beside the point had it succeeded, since Professor Hart merely undertook to point out the rules he thought indispensable to social living without explaining why these rules ought to become (not do, or may become) prescriptions and why the prescriptions ought to be accepted as morally binding.[8]

Indispensability of means surely cannot be equated with moral obligation unless the end they serve is shown to be morally obligatory. If correct, Professor Hart's view, that "there are certain rules of conduct which any social organization must contain if it is to be viable" does not show why these rules are *eo ipso* morally binding. Would social survival be morally obligatory if it required morally repugnant means such as cannibalism? Why is the rational interest in survival, if it exists, a morally binding natural law at all? From Professor Hart's reasoning, a moral obligation to eat or to bear children could be inferred, as indeed could an obligation to engage in any human behavior needed for social survival. (In Kantian terms Professor Hart, at most, states hypotheti-

7. Contrary to what Bruce Aune writes (*Kant's Theory of Morals*, Princeton, N.J., 1979, p. 120): "The fundamental weakness of Kant's moral theory lies in its appeal to a teleological system of nature." Kant makes no such appeal. His work was intended to supersede natural law by a *a priori* reason. The "fundamental weakness" is in Professor Aune's understanding of Kant.

8. *The Concept of Law*, (Oxford, 1961), pp. 181-207.

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cal imperatives where categorical ones are wanted; their alleged universality is contingent as well.)

As Ronald Dworkin[9] points out, John Rawls too implies natural rights if not natural law, although his method of discovering them obscures the implication. Professor Rawls derives his rules of justice from people's (presumed) choices in an experimental situation. But he does not explain why these choices should be morally binding or even why they reflect justice.[10] His insistence that the choices are rational does not help since his risk-aversive rationality is not the only one available. However, Professor Rawls contends that the choices dictated by reason lead to justice, as a moral concept, rather than to viability, wherefore they are at least morally relevant, as Professor Hart's are not.

Robert Nozick's notion of justice is an extended gloss on Ulpian's *suum cuique tribue* although he might as well have taken his cue from John Locke's "The law of nature . . . obliges everyone; and reason . . . teaches . . . that no one ought to harm another in his life, health, liberty or possessions." One would not want to disagree with any of these rules. It is their meaning, their derivation, and their epistemological status that is the problem. The trouble with Professor Nozick, in particular, is that the validity of title to possessions and of the obligation to regard it as morally binding can be readily questioned by redistributionists, unless one holds strong opinions on nature's title-granting authority and on its presumed use of it. Professor Nozick apparently does, although he is not telling why.[11]

Reason, Natural Law, and Natural Rights

Rights always being creatures of law, natural rights are the offspring of natural law. Natural rights are thought to express the nature of our human nature, more perhaps than that of the uni-

9. *Taking Rights Seriously*, (Cambridge, Mass., 1979), pp. 151-181 *passim* and specifically pp. 177-8.

10. People are expected to choose their own interests, to be maximized in a utilitarian manner, but protected against some kinds of aggregation by becoming rights. The result is more interesting than convincing. John Rawls, *A Theory of Justice* (1971).

11. See his *Anarchy, State and Utopia* (New York, 1974). Professor Nozick proceeds brilliantly once his natural rights premise is granted. His articulation and his illustrations of justice as noninterference with natural rights are illuminating and his incidental points are often original and striking. Interestingly, Professor Nozick's natural rights are quite different from Professor Dworkin's. At least the conclusions drawn are. They must have different natures.

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verse, but also the will of nature or of nature's God or to be inherent in universal reason and morality; they are thought to obligate us more than positive law can on these grounds, though how much more is controversial. Legitimate or not, natural rights proved highly philoprogenitive, endowing us, and lately it seems other creatures as well, with indefinite "human" or "moral" rights—to whatever we need or want—which positive law is supposed to accommodate and not to override. Usually little is said about how and at whose expense society is to accommodate the steadily proliferating human rights. We are not told either why society is bereft of a natural right to override the natural rights of individuals although early natural law theories insisted on no less even before Hobbes.

Whereas natural law often was used to justify the existing order against individual dissenters, natural rights came to be used largely by individuals against the community and its ruler. To paraphrase Leo Strauss, natural law suggests the duties of individuals, the claims of the whole, of society (or of morality) against the parts; whereas "natural rights" suggest the claims of the parts against the whole, of individuals against society. Moreover, law, including natural law, tells what one must or must not do; whereas rights, including natural rights, tell what one may do and what *others* must or must not do. Natural rights gained currency as individualism did. Different origins of natural law and of natural rights were duly discovered. But this matter will not be pursued here.

Hugo Grotius said clearly, as William of Ockham[12] did before him, that "the law of nature is a dictate of reason," and . . . "unchangeable . . . so that God . . . cannot cause that that which is intrinsically evil be not evil."[13] That is, Grotius thought natural laws to be objective, universal, intrinsic, and unchanging, as he thought the laws of mathematics to be. They are not the dictates of God, but of reason (which God endowed us with). Cicero[14] thought that right reason, which is a true law, is "unchangeable and eternal, binding at all times on all men."[15]

12. Ockham was perhaps the first to define natural right explicitly as independent of agreement (positive law), whereas only natural law had been so defined before.

13. *De jure belli ac pacis.*

14. *De re publica.*

15. However, modern proponents, such as Rudolph Stammler, feel that natural law may develop or become known, i.e., that, in practice, it changes. This view minimizes the difference between natural and positive law and indeed makes the former no less arbitrary than the latter.

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Natural rights are alleged to have as objective a source as natural law does. They are rights derived from human nature and independent of, prior to, positive (legislated) law, which ought to articulate them and which, according to Ronald Dworkin,[16] may be superseded by natural rights where it is inconsistent with them. "Moral rights" do not seem to differ much from "natural rights," at least to Professor Dworkin or Professor Gewirth. Both derive from our nature and are more authoritative than the will of legislators. Both can be demonstrated to be correct by reason and are therefore binding on all rational beings. Both are deontological and differ from consequentialist calculations or from axioms derived merely from intuition. There is no doubt in the mind of proponents of natural rights that all men in Jefferson's phrase, "are endowed by their creator with certain unalienable rights" which are universal (all men) and independent of positive law (unalienable).

Natural rights imply at least one duty: everyone must respect them and refrain from interfering with them. Duties are not necessarily reciprocal. Humans may have the moral duty to refrain from gratuitous cruelty[17] to animals, but animals have no duty not to be cruel to humans. Therefore, they have no rights either. For only members of a class which can recognize the rights of others by *recta ratio* (and respect them at least potentially) can have rights.[18] Thus right holders may have duties also to those who do not have rights. Duties, then, do not always create rights for those toward whom they are held, although duties imply the right of duty bearers to act in accordance with them. Rights, in turn, impose at least the duty of noninterference on all those who can reason. Thus, there are no rights without duties (of others), although there are duties without rights of others.

It is sometimes argued that not all rights impose duties. A pris-

16. See Appendix B (pp. 35–47) of my *Political Violence and Civil Disobedience* (Harper Torchbooks, 1972). "Passing a law," Professor Dworkin writes (*op cit.*, p. 192) "cannot affect such rights as men do have." "Law" here includes legally valid court decisions.

17. Cruelty is gratuitous when it serves an end not thought to justify it, such as pleasure directly derived from the cruelty. When this pleasure is not the end, cruelty is often thought not to be gratuitous. When incidental to commercial ends, or when, generally, a means to something less frivolous than pleasure, such as food, cruelty is thought less immoral, even when the food itself is eaten mainly for pleasure (e.g., *foie gras*). There seems to be an aversion not so much to cruelty but rather to pleasure *directly* derived from it. There is much less aversion to pleasure derived from the products of cruelty.

18. The incurably insane have rights only in as much as they belong to a class, "humans," that does. Else we only would have duties toward them.

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oner of war is said to have a right to escape, but his guards obviously do not have a duty not to interfere. However, this does not refute my contention that there are no rights without duties of others.

Fellow prisoners, rather than guards, have a duty not to interfere with the escape. Thus the right of the prisoners implies a duty of noninterference by some others, though not by guards. More important, guards and prisoners owe allegiance to different governments. Their government imposes the duty on prisoners to try to escape. Their right is but a recognition by others of the duty the prisoners owe their government. (Criminal prisoners have no such duty and no such right.) In turn, the government that employs guards imposes on them the duty not to let the prisoners escape. Wherefrom flows their right to interfere with the right of the prisoners. If each wants to respect the other's allegiance and the rights and duties flowing therefrom, each must concede the other's right to respectively escape and hinder escapes—but neither need act according to the right of the other, which depends entirely on the other's allegiance. With respect to escape, each side is bound by its own allegiance.

The situation would be different if both guards and prisoners had endorsed a universal right to escape, or a universal duty not to. In that case the guards would have a duty not to guard, or prisoners not to escape. But the guards only recognize—as do the prisoners—that the prisoners' government imposes the duty to escape and the guards' government the duty to guard. Both may regard their duties and rights as legitimate and despite the conflict, they are not inconsistent, if we assume that allegiances to different sovereigns are legitimate. That assumption is made by international law.[19]

The notion of universal and eternal natural law and of rights based on reason and on nature is unclear in a number of ways. For instance, there is little agreement on how imprescriptible natural rights are. Thus Ronald Dworkin writes, "Bentham thought that the idea of moral rights was 'nonsense on stilts.' "[20] Since Ben-

19. For a brief and incomplete analysis of the right to escape, see Dworkin *op. cit.*, p. 189. Had Professor Dworkin completed his analysis by deriving the apparent inconsistency between the rights and duties of guards and prisoners from their allegiance to different sovereigns, he might have reconsidered his claim that rights are independent of the commands of sovereigns and supersede them.

20. *Taking Rights Seriously* p. 184. Professor Dworkin gives no source but must have referred to the passage I quote in the text, which is found in *Works of Jeremy Bentham*, ed. J. Bowring (New York, 1972), vol. II, p. 105.

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tham actually wrote, "natural rights is simple nonsense: natural and imprescriptible rights rhetorical nonsense—nonsense upon stilts," it follows that Professor Dworkin identifies his moral rights with Bentham's "natural and imprescriptible rights." But, although Professor Dworkin's moral rights are but a trendy pseudonym for natural rights, he qualifies their imprescriptibility by writing, "the government may override [a] right when necessary to protect the rights of others, or to prevent a catastrophe, or even to obtain a clear and major public benefit."[21] (The latter only "if the right in question [is] not fundamental.") Thus, according to Bentham, Professor Dworkin's view is "nonsense" but not "upon stilts" contrary to what Professor Dworkin suspects.

Yet, Professor Dworkin also writes[22] that a right cannot be overridden merely because overriding it "is likely to produce overall a benefit to the community." These qualifications do not help clarify the status of moral rights; indeed they leave the strength, even the meaning, of moral right vague. Professor Dworkin's own, "if someone has a right to something then it is wrong for the government to deny it to him even though it would be in the general interest to do so,"[23] sounds good but does not help.[24] Wherever anyone's right that entitles him to anything comes from, it would always be wrong to impinge on it without good reason. That much is implied in the definition of right and is independent of any qualification of the right as legal, moral, natural, or whatever. The positive law stipulates reasons sufficient tc override the rights it grants on occasion. Professor Dworkin's theory simply tells us that the reasons for overriding his fundamental moral rights must be important. But how important? What kind of reasons? The mumblings about preventing a catastrophe, or obtaining "a clear and major public benefit," imply no more than that some community interests sometimes have precedence over some individual moral (a.k.a. natural) rights. Since the attempt to make the individual's interest in his life, liberty, or whatever, into an absolute imprescriptible right must fail, as Professor Dworkin himself implies, we are left with an interest

21. Dworkin, *op. cit.*, p. 191.
22. *Ibid.*, p. 192.
23. *Ibid.*, p. 169.
24. The meaning of the phrase becomes most dubious if one tries to apply it to a concrete situation. If I have a right to innocent life, or to spaghetti, or to welfare in some sense, is it "wrong for the government to deny it" to me, even if that is the only way to protect the innocent lives, the spaghetti or the welfare of ten other persons who have the same rights as I do?

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normally to be protected by the community as a right and sometimes to be sacrificed to its interests or rights. This is where we would be under all conceivable circumstances as long as legal rights or even interests of any kind are recognized. Professor Dworkin may have outsmarted himself here; which wasn't that hard after all.

Necessary Conditions and Moral Imperatives

The notion of natural law as moral prescription arises from an identification, conflation, or, sometimes, from a confusion of conditions deemed necessary for human or social existence with moral prescriptions for it. While for some philosophers, these conditions are *sine qua non*, indispensable to human existence, for others they need only be distinctive of the human species; or of a desirable existence; or, in a more or less unavoidable way, inherent in human nature. The conditions, or at least the prescriptions derived from them, may also be ascribed to reason. The epistemological status of natural, moral, or human rights is quite similar.

Now, there are indeed some universally indispensable conditions for human existence (such as the presence of oxygen); and for social existence; and, not least, for appealing or civilized existence. Some of these conditions are inherent in the nature of nature or in our own nature as we know it, at least to a large degree.[25] Some are environmental; and some refer to our own conduct.

But, from a correct observation, such as "if we defy the law of gravitation, or do not eat food, or stay permanently drunk, we will not survive long," a moral, as distinguished from a prudential, conclusion cannot be drawn. Moral conclusions require moral premises.[26] Here the moral premise, if any, seems to be: *vivere necesse est* (It is necessary to live). That is, we have a moral obliga-

25. I am cautious here. What two hundred years ago would have been held to be inherent, e.g., inability to see or hear at great distances, or to fly, is not necessarily so. And cogent alternatives to Euclid's geometry have been found applicable to unforeseen conditions.

26. Matters are not helped by insisting that our need for something—be it liberty, food, or air—leads us to demand it and thereupon to grant it to ourselves and to others similarly in need, as a right. An interest cannot be transformed into a moral or natural right either because satisfaction is indispensable or because it is universal, unless we have shown that the morality of conditions can be inferred from their indispensability or universality. But my natural wish to have my interest protected does not transform it into a right, nor does it morally obligate me to protect your interest.

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tion to preserve ourselves by following (descriptive) natural law. Nature somehow is vested with moral authority and assumed to use it to command us to survive. Yet its power cannot give nature moral authority. Power, including natural power, only yields prudential not moral norms. Nor does nature evince a desire for our survival or extinction. Nature neither desires nor prescribes. It only makes things possible. If nature did have desires or purposes, it still would lack the authority to obligate us. I cannot see how any moral norm can be imputed to it, or to any alleged factual condition.

If we do desire to survive and require certain conditions, would the survival and the conditions necessary to it become morally obligatory so as to bind us all? Only if the desire to survive is morally obligatory more than a shared interest. But neither nature nor reason can make it so.[27] To be sure, if we want to associate fruitfully with one another, such dicta as *pacta sunt servanda* (Promises must be kept) and *neminem laede* (Do not harm anyone gratuitously), must be observed. But for entirely prudential reasons.

Promises, by definition, declare actual intentions and contract obligations about the future. If we refuse to promise, we refuse to commit ourselves to the future. If we do not intend to act as promised, we make pseudopromises (which become incredible).[28] If promises are not made or kept, we suffer inconveniences which promise-making and keeping avoids. Yet the morality of promise-keeping does not follow from this prudential consideration unless we add that that which makes life easier is morally good, and therefore binding, or is prescribed by nature, and therefore binding. There is no warrant for this addition.[29]

Finally, one may contend that the moral and the prudential are identical. Consequentialists certainly can do so. So can those who believe that there are no moral rights or norms not reducible to interests; and that interests are not morally binding unless we (not nature) first have made them so; and that they are epistemologically arbitrary, i.e., that they could be different. However, proponents of natural law cannot argue that the prudential and the

27. I assume that by reason more is meant than consistency—something like an inherent prescription.

28. The broken but genuine promise is not important here, because the intention was to keep it.

29. We also can define promises as morally binding. But in doing so we bind ourselves to our definition, i.e., we, not nature, made a moral rule.

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moral are identical unless natural law is emptied of customary, indeed, of any distinctive, meaning.

People could not associate unless they felt reasonably secure in their lives. Hence only those associations continue where some degree of security is provided which makes *neminem laede* desirable, but not a moral precept derived from nature; rather a common interest.

Whether one says "the human condition prescribes what is necessary, or helpful, to human (or social) existence" or prefers to say "nature presents us with conditions for human or social survival" is a matter of indifference if we are aware that we are considering prudential matters. Yet we are relucant to accept as much. We long to hear a voice telling us that our moral decisions are inspired, even dictated, by moral rules and standards that transcend our interests and are prior to and independent of them. The wish to hear this voice, the voice of the father, must not be confused with its fulfillment.[30]

Superhuman Authority and Reason

Some find the ultimate source of moral authority in God, directly or through some quality such as reason with which He endowed us. But belief in a superhuman authority would not help in our discussion for two reasons. First, belief in God requires faith. But our discussion is confined to argument independent of faith, which, by definition, is not ultimately proved by or subject to argument.[31] Incidentally, if we rely on faith, why should it not be available for the moral standards themselves? However, if moral standards are to be validated by faith, we foreclose the very discussion we are engaged in: we need not ask whether there is any-

30. The parental voice is introjected ultimately to become an autonomous conscience; and projected to become the transcendent moral law which inspires conscience. But this psychological genesis is philosophically irrelevant. Nonetheless, it may be noted that Freud's notion of superego command (issued because morally required) as distinguished from an id demand (issued for the sake of pleasure) or an ego demand (issued for the sake of realistic self-preservation) coincides with Kant's notion that the moral is that which is done for moral reasons alone. We certainly do feel and act at times as Freud described and Kant prescribed. It does not follow that the moral can be shown to be objectively so nor that we are bound to its imperatives. (In Kantian terms Freud's superego is more heteronomous than Kant would like morality to be.)

31. Things were different when philosophical proofs for the existence of God were respectable. Today religion must rely on faith, buttressed, but not produced, by reason.

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thing—such as natural law—other than faith, on which moral norms can be shown to be based.

Second, faith in God merely postpones meeting problems of the kind with which we are concerned. God may transcend these problems psychologically, but not philosophically. God may directly or indirectly dictate binding moral norms; but the existence of God, however much one believes in Him, poses questions about His authority, our submission to His will, and His morality. Faith in God does not answer these questions without a second *saltus fidei* (leap of faith) required to achieve faith in the sufficiency of the *mysterium tremendum*. Attractive and admirable as these leaps are, they do not answer, but merely supersede, or dismiss philosophical questions. The philosophical rule is that the Gordian knot is not to be cut. It must be unraveled.

The attempt to demonstrate that reason validates moral norms or requires the granting of moral rights often universalizes some necessary condition of human action, which, from a necessary good, is then promoted to become a generic right. Since it is necessary to him, the agent claims that the good ought not to be interfered with by others. They must be granted the same right; and *presto*, we have a human right granted by nature and reason. Alan Gewirth elaborates at great and often instructive lengths on this.[32] But a natural or necessary condition of human agency, such as the one which, according to Professor Gewirth, we are required to grant as a universal right, on pain of inconsistency, does not become a human right even when implicitly needed and claimed by everyone. A universally shared interest does not, *ipso facto*, become a morally binding right.

There is no reason why a person who has not received Professor Gewirth's instruction should claim that his interest, however indispensable, is a right and universalize it. If he did there is no reason why his claim makes what he claims a right. But he may be satisfied anyway to promote what he wants or must want as a shared interest which is not morally binding. He may also perceive his interest as conflicting with that of others. He may wish to interfere with their interest and may not grant them the right which, according to Professor Gewirth, he must grant. Would such an agent's actions be incoherent? No, only the propositions Professor Gewirth has put in his mouth would become inconsis-

32. *Reason and Morality* (Chicago, 1978).

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tent. The agent may actually see his interest in conflict with similar interests of others.[33] Professor Gewirth insists on representing these interests in propositions which, if the interests conflict, become inconsistent. He thereupon expects the agents to act so that he can represent the actions by a set of consistent propositions. An unreasonable demand: the actors have no reason to accept Professor Gewirth's propositions and to transform their interests into rights. If they do protect their interests by granting rights in positive law, they do so for prudential reasons and are not required to do so by logic or morality. It is not necessarily in the individual interest of agents to grant to everyone the right to be free from interference with his freedom.

Even if the agents followed Professor Gewirth, he would have persuaded them, at most, to recognize a universally shared prudential interest in noninterference; not to grant or claim a morally binding right.[34] Propositional formulations of interests cannot transform them into human rights.

Reason as Prescription

Before Kant the main role of reason was to discover nature's prescriptions. After Kant reason itself often does the prescribing. Reason is thought of as part of human nature: inherent, permanent, universal, and objective. So therefore are its prescriptions. However, Kantian prescriptions usually are less eudaemonistic than Aristotelian or Thomistic prescriptions, since Kant defined moral virtue largely as the motive for restraining one's nonmoral desires. In this definition of morality, Kant was seconded by Hume before and by Freud afterwards. Post-Kantian prescription once more tends to become eudaemonistic.

Kant's attempt to rest morality on reason alone deserves more comment than I can give it in a paper on natural law. Kant's reason does not suppose a prescriptive natural law.[35] Nor does he identify prudential interests with rights. Kant identifies the moral and the rational. The categorical imperative is a dictate of neither

33. Here Professor Gewirth seems to stand Kant on his head. Kant argued that universalizability is the condition of morality. Professor Gewirth seems to say that morality (or right) follows from the universality of claims.

34. Because of my own interest, I want positive law to grant a right to freedom. But it comes into being only when granted by positive law—even though nature may have created my interest. How it can create rights eludes me altogether.

35. See footnote 7.

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nature nor prudence but of rationality. However, I do not believe that universalizability can take the place that natural law had to vacate; nor indeed does it constitute a meaningful moral rule, except in a heuristic sense.

The categorical imperative, *qua* categorical, has no content and ceases to be categorical when it is given a content. It tells us not to do what we would not universalize. To begin with, this is a very unrestrictive restriction—after all, different people might universalize different rules. To wit: Abortion should (not) be permitted, prisoners of war should (not) be killed, murderers should (not) be executed, the rich should (not) be compelled to support the poor, etc.[36] We are given no criteria to choose among universalized preferences.

More important, the requirement of universalizability only appears to rule out anything. Actually, nothing is ruled out. I may defend murder by saying, "Anybody called Ernest van den Haag may or even should kill everybody with a different name," is a universal maxim. This may sound frivolous. But for being named Ernest van den Haag, one can readily substitute being German, being poor, or any other characteristic.

I suspect that one could stipulate some restriction to the Kantian rule to prevent such use, but I do not know any that would satisfy the Kantian criterion of being derived from rationality and required by it. Thus the Kantian imperative does not really discriminate between the morally permissible and the forbidden. But it was a brave and enormously productive try—possibly the only one that came near justifying, though not producing, a cognitivist ethic.[37]

Secular Moral Authority

So far I have been concerned with the derivation of natural law and with its epistemological status. Let me turn now to its content and ask: Would natural law be a safer basis for desiderata, such as liberty, than the alternatives? Are there predictable social differences dependent on whether or not one accepts natural law as the basis for positive law and for human rights? (I assume a reasonably traditional content of natural law.)

36. Note that the contents of natural law are similarly indeterminate.

37. I owe most of the argument on the categorical imperative to my friend Michael Levin (see his "Kant's Derivation of the Formula of Universal Law as an Ontological Argument" in 65 *Kant-Studien*, 1974). He is not to be held responsible for what I learned from him.

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In the past moral authority came from God through scripture interpreted by churches. As the link with the superhuman became weaker and churches were separated from the state, a more secular moral authority was found in natural law. It was known and accepted before, but it was newly stressed, because it seemed to be the only moral authority left. Religious believers as well as nonbelievers feared living in a society shorn of perceived objective authority. They feared that positive law would rule supreme and be dissociated from any morality prior to it. The positive law itself might not be morally binding but only prudentially so. Malevolent tyrants or mobs might be in charge of making positive laws. There would be no appeal against it and no restraint on it. Bereft of divine guidance and of natural law, society might return to some of the cruelties attributed to pre-Christian Roman emperors.

Whether justified or not, fear or need cannot logically produce or validate natural law or the objective moral authority craved. Needs, however dire, unfortunately do not produce what is needed.[38] But the assumption of such a need legitimizes the question we must turn to: is the absence of natural law as calamitous as assumed by its proponents? Are the social consequences of the absence as undesirable as alleged? This is an empirical question.

Surely the presence of natural law, even when it was generally recognized as moral authority throughout the Middle Ages and up to the nineteenth century, cannot be said to have done much for individual freedom. Natural law did not protect liberty from the tyranny of rulers or of revolutionaries, even when both recognized it. The Roman Catholic Church did recognize it. So did the medieval rulers. So did the Reformation. So did the French Revolution. Individual freedom did not gain from this recognition.

Now, defenders of natural law may suggest that the versions that led to or justified undesirable actions were incorrect. Quite possibly they were, and natural law cannot be blamed. One may also suggest that in the instances at issue, correct natural law, al-

38. Oddly enough, those who argue that there must be natural law, because its absence would have terrible consequences, rest their argument on a consequentialism quite alien to natural law tradition and principle. It is, moreover, a perverted consequentialism. Consequentialists do not believe that, if the consequences of something being untrue, unwarranted, or incorrect were bad, it would become, or have to be, true. They believe that actions should be evaluated in the light of their consequences, not that ideas are true or untrue depending on the desirability of their social effects. (I cannot vouch for some pragmatists. But consequentialists need not be pragmatists.)

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though known, was violated. If we grant the cogency of these defenses we are still confronted with the fact that the general acceptance and philosophical justification of natural law did not prevent the undesirable events that its defenders now tell us natural law, and natural law alone, can prevent.

In more recent times, the totalitarian dictatorship of the Nazis and the continuing totalitarian dictatorship of the Communists were not and are not based on what proponents of natural law often call relativism. Both dictatorships were and are based on what Sir Karl Popper calls essentialism—a view indicating that there are inherent values which are morally binding, objective, and demonstrated. The Nazis found these inherent values largely in pseudobiological speculations. Marxists find these values in pseudohistorical speculations. The Nazis felt they were commanded by biology, to which they ascribed final moral authority, to do what they did. The Marxists feel charged by history, to which they ascribe final moral authority, to suppress individual freedom and to commit the outrages they still commit.[39]

Thus, objective value structures firmly believed in need not be helpful to individual freedom. To be sure, the objective value structure of natural law is quite different from the Nazi or Communist system. Nonetheless, belief in natural law did not vouchsafe individual freedom either. At times it served to defend, at other times to help suppress freedom. Its social effects are not predictable. They cannot be, for the actual content of natural law is discovered by reason to be different in each historical period, tradition merely accompanying reason as an *obligato.*

This is not to deny the psychological benefits belief in natural law or any objective morality may bestow. However, they are philosophically irrelevant; and the social effects seem unpredictable. Still, I believe that it is unlikely to be socially advantageous to teach that morality is but a matter of taste, nor has this ever been done until now.

There have been major civilizations with considerable achievements but without belief in objective value systems recognized or justified by philosophers. In the contemporary world there are moral persons who do not believe in a cognitivist system of ethics,

39. On the notion of "essentialism" see Karl Popper, *The Open Society and Its Enemies* and also Friedrich von Hayek, *Law, Legislation and Liberty.* I have some reservations on Professor Popper's version of history and on Professor Hayek's utilitarianism, but they do not weaken the general point made above.

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and there are immoral persons (by commonly accepted standards) who do.

Belief in the worthwhileness of ends—be it playing tennis, making movies, writing novels, exploring physics, winning wars, or bringing up children—a belief which is needed for achievement, seems but questionably linked to the presence or absence of the convictions of philosophers and intellectuals about objectively demonstrable values. Nor can the behavior of nations and individuals be shown to be determined by the presence, absence, or diffusion of such doctrines.

The link between the psychology of achievement—or on the other hand of hedonism in the demoralizing sense—and belief in cognitivist ethics intellectually held has not been sufficiently explored. Thus the link between morality, morale, or demoralization, and the intellectual justification of moral standards of conduct remains obscure. Still, it is entirely possible that we may now live on the capital of the past. Whatever may be said about non- or pre-Christian societies may not be true for a post-Christian one, which may have become too individualistic to produce a shared value consensus.

Under the circumstances, we may be well advised to keep what belief there is left in objective values if only for prudential reasons of great psychological and social import—though of no philosophical relevance. Certainly the institutions that cultivate such beliefs should not be weakened by the government.[40]

Proponents of natural law are most disturbed by the presumed effects of nondeontological alternatives such as relativism, utilitarianism, or consequentialism. The meaning of most of these alternatives, as it appears to believers in natural law, is not altogether clear. Still, let me try.

Relativism, Utilitarianism, and Consequentialism

I am not a relativist. I believe that the distance between New York and Los Angeles is greater than the distance between New York and Chicago—a relative statement which I can demonstrate to be true. I also feel—though I cannot demonstrate—that some values are better than others—also a relative statement. Surely relativism must mean more than acceptance of these statements;

40. I have not changed my position on this matter since my "An Open Letter to Sidney Hook," published in *Partisan Review* (1950) and republished with his rejoinder in Hook's *The Quest for Being* (New York, 1961).

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but I am not sure what it does mean.[41] Do relativists believe that values are always subjective, never in any sense objective? If so, I do not know why they would. If values cannot be objectively demonstrated, if they follow from undemonstrable axioms, values still may be objective. From nondemonstrability only nondemonstrability follows, not that that which can not be demonstrated is not objective even though it cannot be shown to be. That which can be demonstrated exists; it does not follow that that which cannot be demonstrated does not.[42]

Do relativists believe that the values of any culture are as good as those of any other? Or that there cannot be any intercultural values or comparisons? If they believe that the superiority of any value or culture over another cannot be demonstrated, they imply that the equality of the two cannot be demonstrated either. Now, intercultural equality itself may be promoted to function as a metaphysical axiom. But it would be as undemonstrable as intercultural inequality and considerably less reasonable. If we lack intercultural measurement, we do not know whether any culture is equal to any other. However, the alleged impossibility of intercultural comparisons is, at best, an odd anthropological proposition of no philosophical relevance. Philosophies can be compared, and values, whether or not demonstrated as true, can be compared and preferred, even if the preference cannot be easily demonstrated to be correct.[43]

I am not a utilitarian because I do not believe that the principle of utility, or the maximization of aggregate happiness, however distributed, is or ought to be the only principle of human action; nor that this principle is inherent in us, and/or somehow morally binding. Yet, all of us are utilitarians up to a point. We differ only on where that point is.

As for governments, I am more interested in liberty, freedom from interference in my pursuit of my ends, than in any govern-

41. I have not met anyone who calls himself a relativist, although I have met people who accuse others of being relativists.

42. Science, of course, is concerned with the demonstrable, often only with the demonstrated. What is demonstrable must be true. But what is true may not be demonstrable, at least not by scientific methods. Hence, philosophers should not pretend to be scientists. Note that my argument heretofore tried to show that natural rights, or natural law, have not been demonstrated to exist or to be meaningful, and that alternative explanations for what they are meant to accomplish or explain are better. I have not tried to show nonexistence.

43. What is here said about moral values seems as true about aesthetic values.

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ment attempt to help me succeed in that pursuit by restricting my freedom to pursue my ends by the means I choose, or my freedom to select ends. Utilitarians, however, are interested in liberty only if it enhances or coincides with happiness, which it need not do.[44]

As an analytical proposition, the principle of utility seems unhelpful by simply defining action as that which attempts to maximize happiness. As an empirical proposition, it seems wrong until it becomes analytical once more. Incidentally, what actually makes individuals happy usually is the achievement, or, better, progress toward the achievement, of their ends whether known or unknown to them.[45] However, once they go beyond biological minima, ends are largely determined by ideas prevalent in the society in which we live. Wherefore the principle of happiness maximization, by telling us that society should have as its end the maximization of the happiness of individuals, can scarcely help us decide what ends society should adopt. Ends are not biologically but, where it matters, they are socially determined. The end of happiness, were it accepted, would not help to determine them.

Even if we had solved all of the problems alluded to, even if we knew what it means to maximize happiness (surely not a homogeneous quantity readily aggregated), utilitarians, crypto-analytical propositions aside, have not demonstrated that we must. Where does the moral obligation to maximize happiness come from? Surely it cannot come from the alleged fact that we try to.

Consequentialism to me means to give up or suspend the invention of objective or inherent natural moral laws and rights and to confine oneself to understanding and relating long- and short-term interests.

I am aware that consequentialism can take us only part of the way and does not help us much to make decisions in many situations. Consequentialism does not tell us how to evaluate the consequences it views as decisive. In practice, consequentialists usually are utilitarians or crypto-utilitarians. But I am not ready to commit myself to any general principle beyond consequentialism because I do not know how to justify it.[46]

44. See my "Liberty: Negative or Positive," *Harvard Journal of Law and Public Policy* No. 1, (1978).

45. Provided that happiness itself does not become an end but is recognized as a byproduct of achievement.

46. Everything said about the insufficiency of consequentialism applies to naturalism and pragmatism as well. My objection to these theories is that they attempt, albeit unsuccessfully, to supply moral norms from nowhere. (It should be noted that all these philosophies can be used to defend or to suppress freedom.)

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Consequentialists believe that interests thought to be important, as a matter of prudence and protection, may be made into positive rights and laws. Positive rights and laws may be suspended or changed *ad hoc* in the light of consequences found desirable. The practical effects of consequentialism may, I believe, come into conflict with some of our *prima facie* moral intuitions, as well as with natural law and rights theories.[47] The time has come to consider these conflicts.

Should We Be Unjust to Individuals?

Conflicts arise if we take seriously the view of some philosophers that private citizens, let alone courts of law, can never be justified in being unjust to individuals. Thus Charles Fried[48] writes "we must do no wrong," even if we could reduce suffering thereby or prevent greater wrongdoing by others. Ronald Dworkin,[49] too, asserts the moral priority of individual rights over social interests. These views follow Kant and are shared by most deontologists.

To assert the right or even the moral duty to be unjust to individuals in certain circumstances as I shall do, one must believe the known consequences of an act, or of an omission, or of a rule more decisive than the intrinsic moral quality or justice of the act *in se*. I share utilitarian views sufficiently to be willing, in some situations, to sacrifice what is right or just, to the maximization of the good, or to the minimization of wrongs. I thus reject the notion of indefeasible rights.[50]

The positive law sides with Professor Fried and the Kantians, although not altogether consistently. Thus, the law allows everyone to keep what he is entitled to, however great the need of other persons. There are some exceptions, mainly when the perceived need is communal: we have eminent domain and redistributive tax powers. But no one may be compelled to give his food, let alone

47. There is nothing in consequentialism to prevent such sentiments as Horace's *dulce et decorum est pro patria mori* (It is sweet and fitting to die for one's country), or any transcendent duty from being accepted or demanded. But duties, norms, or rights must be evaluated in terms of consequences, and are imposed by human decision, not prescribed by nature.

48. *Right and Wrong* (1979). It does not matter here what unjust means. Fried might have written, "We must never violate principle X" to be as unreasonable as I believe he is.

49. Dworkin, *loc. cit.*

50. "Right," "just" or "justice to individuals" are here stipulated along the lines of Ulpian's maxims, or along Roman and common law lines. I argue from these stipulative definitions without attempting to demonstrate what I think is not demonstrable.

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his blood, to another person to whom he is not obligated by specific law or contract, even if he could do so without much inconvenience, whereas the individual in need might die without. It may be that transfusions or transplants are still so new that the law has not quite caught up with the possibilities opened by science. On the other hand I shall argue that every person ought to continue to be entitled to his own body, including his blood, and that no one else should be entitled to any part of it—but not as a matter of moral right or principle. Rather, because it would be awkward to have third parties determine when somebody must part with one of his healthy organs to be given to someone who needs it more.

There is no obligation in positive law to protect others from harm not caused by oneself, even by making comparatively minor sacrifices, unless one voluntarily assumed a duty to do so (a policeman does) or that obligation has been specifically imposed by law (it is imposed on a soldier). At most, one has the duty to warn of danger. The law is far from consistent, however. While I am not legally obligated to give my food or blood to anyone in dire need of it, even though I have plenty, I may be drafted and obligated to give my life for my country.

The legal never exhausts the moral. Surely there are circumstances in which, although there is no legal obligation, there is a felt moral obligation to part with some of one's property, if one recognizes almost any set of moral axioms.[51] I shall suggest as well that there are situations in which, for the sake of others or of the community, private citizens or courts are morally justified to use individuals unjustly or, for that matter, illegally.[52] Let me present some cases before arguing them.

A mob insists on lynching an innocent person and threatens to kill those who protect him or other innocents unless he is handed over. Should he be handed to the mob to save more than one innocent life?

A tyrant decides to shoot a hundred innocent prisoners. However, he is willing to spare ninety if a bystander will shoot ten; or, if the bystander will shoot ten innocent persons not among the pris-

51. Such a recognition need not be dictated by nature, but by one's own will. And the axioms may be derived from shared interests. Hereafter I simply stipulate them as recognized principles of moral and legal reasoning, disregarding questions about their foundations.

52. Injustice to individuals here consists in deliberate violation of the rights (recognized interests) they are conceded to have, including the right to innocent life.

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oners; or finally, if ten innocents (among the prisoners or not) are executed upon being convicted by judges of capital crimes they did not commit.

The lynching case is familiar; the case of the tyrant and of the judges is similar to occurrences in Nazi-occupied Europe. To yield to the tyrant or to the mob is unjust to the individuals sacrificed. Can that injustice, that overriding of the basic interests of the individuals concerned, be justified? Let me dispose first of some irrelevant but influential points.

Authorities who yield to threats and order or allow the killing of innocents to save others may be motivated by indifference to those to be killed rather than by concern for those to be saved. Or, commanders may fear that they would suffer personally if they defy the threats of mobs or of tyrants; and commanders or judges may hope to gain personally if they yield. Thus, authorities may act out of selfishness, cowardice, or ambition, and not out of concern for the welfare of others. Perhaps that is why commanders who yield to monstrous demands are usually vilified—however many lives they may save; whereas those who defy such demands become heroes—although their defiance may have cost more lives than it saved. However, the rightness of actions, not the goodness of actors, is at issue here. The character and motives of the actors, however blame or praiseworthy, are not relevant to the rightness of their actions. The question to be answered is: How should we program a computer if it were to make the decision?

Another point looms large in the psychology of decision makers, although of doubtful relevance to the rightness or wrongness of their decisions. If one actively participates in wrongdoing, one appears and feels as an accomplice, even if one participates only to prevent greater wrongs by others. One feels guilty if one surrenders a prisoner to a mob and more guilty if one actually kills innocents—even if fewer innocents are killed because the prisoner was surrendered to the mob, even if a hundred innocents are spared because one personally killed ten. It is psychologically easier to wash one's hands of the matter, to pretend not to know, or at least not to be responsible for the effects of one's refusal.[53] However, anxiety about personal guilt does not justify refusal to do a wrong, if doing the wrong would reduce the total wrong done by

53. I have not fully separated here evil caused, from evil not prevented, and various degrees of active and passive participation. Although of some moral importance, and of great legal importance, these distinctions need not be made at this point.

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others. One's wish to avoid involvement and the ensuing anxiety is scarcely a moral argument.

Legally there is no obligation to shoot the ten—on the contrary, to do so does carry legal risks. There is a legal obligation to protect the prisoner, but it is not absolute. The legal answers obviously do not meet the moral problem. (The law does not envisage the problem.) However, the difference between omission and commission, which is so important in legal reasoning, cannot be altogether irrelevant: morally too, omissions are properly regarded as less culpable than commissions. Failure to reduce harm by charitable contributions cannot weigh as heavily in the moral balance as would actively producing the same harm.[54] The failure is not intended to produce the harm it does not avoid. One is more responsible for what one does intentionally than for the incidental effects of what one fails to do, even if the harmful effects of incidental omission be greater than those of intentional commission. Yet a deliberate failure to save a hundred persons at the expense of ten and of one's own participation in wrongdoing requires a moral justification: surely one's failure to save a hundred by killing ten is not as wrong as a tyrant's active killing of a hundred. Is it wrong at all? Is the killing of the ten a moral duty?

Prudential Reasoning

Before further examining the dilemma at issue, consider some prudential reasons for refusing to do a wrong, an injustice to individuals, when it seems to avoid greater harm to others. Often conflated or even confused with moral reasons, prudential reasons are certainly relevant to any decision. But they are logically independent of the moral reasoning on which I want to focus—although that moral reasoning may ultimately derive from prudential reasoning of a different, less contingent kind.[55] Here are some prudential justifications of defiance.

54. Much depends on the degree of responsibility felt for the beneficiaries of charity. *Volente nolente* we must admit to a greater responsibility to those near to us—with whom we can, and do, identify—than for those far away, or culturally distant. (Here, incidentally, lies the answer to the abortion problem: it is the degree of identification with fetuses at various stages of development that determines the protection they will and, perhaps, should be accorded.)

55. I include here under moral reasoning, for the sake of convenience, what may as well be called an analysis of the appropriate relationship of individual to social interests, as well as deontological reasoning. A prudential justification in this terminology is one that meets the problem in terms of contingencies without addressing that which must be addressed in either deontological or consequentialist terms.

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If defied, the threats of a lynch mob or of a tyrant may not be carried out. This prospect by itself may justify the risk of defiance, depending on the probability one assigns to the threats being carried out. Thus one may opt for prudential defiance, even if, were it certain that the unjust threat will be carried out, one would comply with the demands made.

Yielding to wrongful demands of mobs or tyrants may set a demoralizing precedent. Over a period of time that precedent may cost more lives than were saved when it was set. Wrongful demands and yielding to them may be encouraged, or the community may become demoralized by having yielded to them.[56] This too is a prudential reason for not yielding—one that is readily, but wrongly, conflated with moral reasons.

Defying an unjust demand may inspire a more altruistic and noble attitude in the community than caving in would. Defiance may produce a higher degree of social solidarity and long-term benefits which might more than offset the net loss of life caused by the defiance. Valid or not, this too is a prudential argument. A strictly moral argument for defiance along Kantian, or, at any rate, nonconsequentialist lines, must be independent of future benefits; and it rejects injustice to individuals, regardless of any benefits to others. Defiance as a moral act defies unjust demands for the sake of justice, regardless of other benefits.

I have given no voice to those who would be sacrificed or saved. Given a voice, those to be saved at the expense of others might prefer to perish with them, or those to be sacrificed might volunteer to save the others. The problem of social ethics would dissolve into a series of moral problems for individuals. These problems are not quite analogous, since social morality includes the order of fiduciary obligations to third persons, and the right of the law to compel individuals, as well as the morality of government policies and rules.

It also makes a world of difference whether the persons the bystander is asked to shoot are among the one hundred the tyrant is about to kill—in which case the bystander kills ten doomed persons to save the remaining ninety; or whether he is asked to kill ten previously not doomed persons to save the one hundred pris-

56. There is an empirical problem—what will the effects be?—and a partly moral problem, about the weight to be given to these effects. However, these matters must not be conflated with the purely moral problem: would compliance with the wrongful demand be justified if it had no effects other than the avoidance of the threatened wrongful action?

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oners—in which case he must kill ten persons who would have survived were it not for his killing them to save the one hundred who would have been doomed.

Finally, distress is greater if one fails to save, or is asked to kill, persons one knows and cares for, than if one is merely aware that anonymous prisoners are going to be executed because of one's refusal to kill others. Should people one knows count more than people one does not know? To demand that all personal bonds be ignored may be pushing egalitarianism too far. Yet the life of a person does not become more valuable in itself if I know that person, although his life is more valuable to me.

Historically, the medieval legend of a dragon who requires the annual sacrifice of a virgin to spare the town from destruction appears to indicate the general acceptance of a consequentialist view. The population customarily complied with the dragon's demand. The problem is never reported to have been met by a refusal to offer the virgin as a matter of deontological principle. Her interest in her innocent life simply was valued less than the interest of the community in its survival. Her rights, if any, were ignored. The legendary hero's heroism consisted of killing the dragon, i.e., eliminating the problem. He never met the problem by protecting the virgin from her fellow citizens. The slaying of the dragon certainly was a better solution—but one without philosophical relevance.

Is defiance of a demand for innocent lives justified if the defiance leads to the loss of more innocent lives than compliance would? Or is it better to comply, to permit, or even to commit injustice to some, in order to prevent injustice and harm to more persons? Is the consequentialist rule "justice to individuals must sometimes yield to social welfare" correct?[57] Or must we insist on a Kantian rule "justice to individuals can never be sacrificed for any social end, including saving the lives of other individuals"? Surely in this form even Professor Dworkin admits the rule will not do.[58] Indeed, the notion of an indefeasible right to innocent life becomes useless in any situation in which the indefeasible right of one—e.g., his right to his innocent life—requires the defeat of the indefeasible right of another—his right to his innocent life.

57. Adam Smith had no doubt: "When the preservation of an individual is inconsistent with the safety of the multitude, nothing can be more just than that the many should be preferred to the one." See *The Theory of Moral Sentiments* in *Adam Smith's Moral and Political Philosophy*, H. W. Schneider, ed. (New York, 1970), pp. 129-30.

58. Dworkin, *op. cit.*

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If the bystander confronted by the tyrant refuses to shoot ten innocents, he allows to be condemned to death ninety, who would otherwise survive. Similarly the judge who refuses to find ten innocents guilty implicitly allows ninety or one hundred innocents to be executed. Shooting ten innocent people is hard. So is finding them guilty, contrary to one's judicial duty. The judge has no legal grounds to find the innocents guilty, and he violates his judicial duty by yielding to extralegal pressures to find them guilty. But he is acting under duress, even if the lives at issue do not include his own. The tyrant, not he, is morally responsible for the loss of life. The judge is responsible for saving innocent lives by failing to do his judicial duty, although he also is responsible for dooming some innocents—fewer than he saves.

Prudential objections to compliance are often disguised as moral ones. But if one abstracts from prudential objections, however disguised, and considers only the purely moral question, objections are reduced either to Kantian categorical reasoning,[59] or to an attempt to save one's own soul, regardless of the consequences to others. Yet, if life is valuable, how can it be right to let ninety or one hundred innocents die to save ten?[60] Does a wish to avoid guilt by avoiding participation in wrongdoing justify letting ninety or one hundred innocents die whom one could have saved? Certainly not if the ten are among those who would be killed anyway. And not even if the ten are not.

Presuming the Fungibility of Individuals

The innocent person, killed to save others, is not helped—perhaps not even comforted—by knowing that his death saves others. He has only one life, his, and he is losing it. His death is involuntary: he is innocent, yet used as a means to save others. To kill him is to commit a wrong. But if killing one innocent person by commission is wrong, is letting more than one die by omission not more wrong?[61] It must be, unless, somehow a quantity discount is presumed.[62]

59. Natural law reasoning probably would have favored compliance, natural rights reasoning probably not.

60. The valuableness of life is here stipulated, neither demonstrated, nor derived from any theory.

61. The omission here is not one that would lead to legal liability: no negligence is involved. But one is morally liable for not doing what one could have done to save others, when one could have done it without risk to oneself and without any but moral discomfort. I do not believe that moral discomfort should be a moral excuse.

62. If the bystander has a special relationship to any of the persons to be killed

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As far as their possessors are concerned, human lives are never fungible. Not even appetites are. Still, both must be treated as fungible by governments. My thirst is not quenched when you drink, nor my life lived when you live. To the government, however, thirsts and lives must be fungible: if it has to choose, it will find it more equitable to slake the thirst of several at the expense of one person. *Social, as distinguished from individual, life, in war and in peace, is not possible unless human lives are implicitly treated as though fungible, at least in some circumstances.* Fungibility is both a matter of prudential reasoning and of power. The deontological view quoted above holds that an individual never can be denied his rights or entitlements in favor of a social interest. This view cannot be defended without resorting to natural rights or to reason as a lawgiver, and these notions have already been rejected.[63]

It is necessary to make some distinctions here. One's interest in one's innocent life cannot be overriden by anything but, possibly, the interest of others in theirs. But what about heterogeneous interests? It is here that the fear of those who cling to deontological rights has its legitimate source. In crude utilitarian terms, they fear that, if the happiness of 10,000 persons is increased by one point for each person through eating ice cream, and if that becomes possible only by imposing life imprisonment on one person, whose happiness is decreased by 900 points, then he might be imprisoned because total happiness is increased thereby. This imprisonment would be unjust and contrary to our moral intuition. Hence, deontologists want to protect the individual with indefeasible rights. However, the objectionable decision is linked to a crude form of utilitarianism to which consequentialists need not be committed. They may well weigh interests in terms other than happiness. Surely the individual's interest in his life should prevail over less fundamental interests of others, even if many.[64] I am not sure how interests should be weighed. But I am sure that they need not be weighed along utilitarian lines.

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or spared, the quantitative considerations have to be modified by giving different weights to different persons. Discussion of these modifications is beyond my present scope.

63. See *supra* pp. 10–16.

64. Social policy follows this prescription only fitfully. People rarely are compelled to lose their lives to make ice cream available to others. But they often are induced to take risks by rewards held out to them for the sake of trivial amusement of others. This risk-taking cannot be objected to if voluntary: it is part of liberty. But risk-taking is not always all that voluntary.

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While justice to some individuals must at times yield to justice to more individuals, the public acceptance of this rule may have a demoralizing and corrupting influence. It may encourage mobs and tyrants to make unjust threats; and authorities to yield to them more rapidly than they should. The rule also may inspire fear in everyone: his welfare, even his life, and any of his interests may be sacrificed to the welfare or life of a greater number. Thus, if the rule is beneficial, its public proclamation is not. This leads to an unpleasant yet inescapable conclusion. The consequentialist rule should be followed, but it should not be proclaimed. The rule should be treated as one of the *arcana imperii* (state secrets); officially, the indefeasability of legal individual rights must continue to be proclaimed for prudential reasons then. This is, like it or not, a description as much as a prescription—that is, it is what has happened historically.

Salus Publica vs. *Justitia*

Sacrificing individual justice to social interests (including justice to other individuals) implies that individuals are fungible. This is repugnant to us. We do not feel that we are fungible. Fortunately, the extreme situations in which the sacrifice of individuals and of their interests or rights to others can be justified are rare. Even in reconsidering the mob or tyrant illustrations, I find it hard to free myself of the lingering suspicion that the defiant stand is attractive (apart from the psychological factors mentioned) because of the implied prudential idea of a duty to avoid setting a demoralizing precedent, which, ultimately, would cause a net loss. However, were we rigorously to abstract from this prudential matter, consequentialist moral reasoning would lead us to compliance rather than defiance.

Fortunately, few situations call for a moral choice uncontaminated by prudential considerations. Nevertheless, when such situations occur, there is an antinomy between consequentialist theory, which gives priority to social survival[65] and, for its sake, treats individuals as fungible, and a theory which gives priority to justice to individuals. Heedless to consequences, deontologists would defy the tyrant's or the mob's demand and refuse to commit the unjust act necessary to prevent injustice to more numerous innocent victims. There would be an irresolvable conflict between doing what is

65. By stipulation. Even if not defined as happiness, social welfare will include the survival of the greater number of innocents.

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just to individuals—*fiat justitia pereat mundus* (Let justice be done, even if the world perish.)—and doing, at their expense, what is helpful to society (to a greater number of other individuals)—*salus populi suprema lex*. (The welfare of the people is the supreme law.)[66]

If it is a choice between actively doing an injustice to some persons and letting the same injustice happen—by passivity—to more persons, I think one should choose to do the first even though it is more difficult. In this respect we should act as though people are fungible. If killing of one person is wrong, killing of two persons must be more wrong. So with injustice or suffering. Although one's degree of participation must make a legal and also a moral difference, that difference cannot be decisive when the choice is clear-cut.

If we accept Ulpian's principle *neminem laede*—do not harm innocent persons—we should add, "unless it be to avoid harm to a greater number of innocents." The airplane pilot who crashes his plane in the least populated area follows this principle. In some situations we should not do otherwise, if we believe, as I do, that life is valuable and that the lives of unknowns must be deemed all to be equally valuable.

Let me now turn to some less exceptional, indeed potentially common situations, in which natural law and rights prescriptions, as well as Kantian ones, clash with consequentialist prescriptions which prescribe actions contrary to our moral intuition if, as stipulated, consequentialists assume that the life of each person has an equally high value as far as society is concerned.

A healthy and happy twenty-five-year-old man comes to a hospital for a visit with a patient. There are in that hospital ten healthy and happy twenty-five-year-old men who cannot survive unless a diseased organ is replaced, and will if it is. That organ can be taken from the visitor and shared among them. The visitor is unwilling to have it removed because of one of the following reasons: (a) some inconvenience is involved, (b) some risk to his health is involved, (c) his certain and almost immediate death will be caused by the removal.

Current law leaves the decision entirely to him and imposes no obligation whatsoever on him. Current moral views probably would suggest that he volunteer if (a) only inconvenience is involved;

66. Usually the task of doing justice to individuals is left to the courts while governments—by exercising emergency powers or pardon powers—implicitly reserve the right to overrule courts in special and extreme situations. But in some cases the courts, too, have to overrule justice to individuals.

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perhaps also if (b) some risk is involved; but only some religious moralities might encourage volunteering if (c) his certain death is involved.[67] No moral view known to me would suggest compelling the visitor to have his organ removed, regardless of whether (a), (b), or (c) is involved.

There may be variations on this situation. For instance, medicine that Mr. Jones owns can be used to cure him alone or to cure ten other people doomed to die without it. It can also be used to cure him and five others, perhaps at some risk to him. Is Mr. Jones morally entitled (as he is by current law) to use the medicine only for himself?[68]

Is present positive law justified, as deontologists and believers in natural rights might claim, in declining on principle to compel the sacrifice of one person, of his convenience, or of his property to ensure the survival of many others? Or, is the refusal of the law justified on purely prudential grounds? Or, is it not justified at all?

There is a second set of questions. Why is a legal compulsion to give parts of our bodies to others so contrary to our moral intuition? There are but a few reluctant exceptions, such as involuntary military service, taxation, and eminent domain, and perhaps also some cases involving property, though certainly no cases involving one's ownership of oneself, one's bodily integrity.

The argument for compulsory confiscation of body parts must be basically utilitarian: the sacrifice of an individual, of his convenience, of his property, of his organs, or of his life is demanded because it would increase aggregate happiness. Before scrutinizing that argument *per se*, let me draw attention to some prudential matters, which I think may motivate intuitive opposition, and perhaps even deontological arguments against the compulsory sacrifice of the individual.

Although the illustration stipulates that the sacrifice would lead to the desired result, this is less than certain in the reality known by experience. Hence, people feel, at least subconsciously, that actual welfare or even life may be sacrificed to potential life or doubtful improvements.

Compulsion would require immense transaction costs, as econ-

67. The religious reason for the sacrifice often lies in the merit found in sacrificing, not in the consequences for the beneficiaries. This matter goes beyond my present scope.

68. One can vary degrees of risk, and of benefits available to various recipients *ad infinitum*.

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omists call them. Some kind of judicial agency would have to determine who has to give what to whom. It is unlikely that, even at great cost, anything like an equitable system (granted the premise) could be enforced. A bureaucratic nightmare is more likely. The attempt may result in more injustice or unhappiness than it prevents, even if the compulsory redistribution could be carried out frictionlessly and without transaction costs and would actually maximize happiness.

The limited redistributive efforts now made by governments, efforts which exempt (military service excepted) one's property in oneself, and indeed nearly anything other than income, demonstrably are of doubtful effectiveness. The undesired effects are costly and horrendous. The prudential case for reducing redistributive efforts is better than the case for expanding them.

The effect on incentive will be depressive. Why care for one's health if it will be redistributed? Why avoid cirrhosis of the liver if it entitles one to a new liver? Why work to buy medicine (or, ultimately, anything) if one can get it at the expense of others?

If we were to be in constant peril of having our organs confiscated by, or for, others, who are in need of them and to whose happiness they would contribute more than to ours, whether because there are more of them, or because they have greater hedonic capacity, we would all lead a very insecure life. Aggregate happiness may be decreased by more than it is increased by the threat of redistribution, whether or not the latter is as predictable as taxation is, or, more likely, even less so. The peril would distort our actions and relationships, for we would all try to escape confiscation. Indeed this might become our major endeavor in life to the detriment of all other activities.

These prudential reasons seem quite sufficient to justify the general rules of current positive law which protect our bodies from being appropriated by others. There is no need to resort to any deontological norms or natural rights. Which is fortunate. For neither natural law nor natural rights, and, therefore, moral rights, in the deontological sense, have been justified.

Let us now inquire into what outrages us so much about the utilitarian principle when it is driven as far as it has been driven above. Apart from prudential considerations masquerading as objections to the principle, there is one important feeling rationalized as a moral right. The utilitarian principle pushed as far as we have pushed it, implies an unlimited fungibility of individuals. This is altogether contrary to the feeling each person has about himself.

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Our proprioceptive feeling is propriocentric. We are all unique to ourselves, and none feels he is exchangeable for others. Wherefore, in Kantian terms, we feel exclusively as ends in ourselves and resent ever being treated as mere (involuntary) means. We want to protect ourselves from the threat of being used for the benefit of others.

Our feeling about ourselves, being a feeling, is neither right nor wrong. Viewed from the outside, it can be shown that each of us is unique, yet fungible too. But we are fungible only to others, never to ourselves. We are fungible as taxpayers, soldiers, voters, and objects of scientific taxonomy. Indeed we are fungible as objects, but not as subjects. No two individuals are identical physically or psychologically,[69] and no individual feels himself to be identical to any other, or exchangeable. It is this feeling of uniqueness, of nonfungibility, that is outraged by utilitarianism if driven far enough. Yet governments treat people as potentially fungible, and they will stop only where transaction costs nullify the benefits to society. Which is likely, on the whole, to be the point at which—could it be an accident?—deontological reasoning also tells governments to stop.

So far I have implied that we know what it means to maximize aggregate happiness. We do not. The objections to the concept, to its quantification and to attempted measurements and distributions, are too well known to need rehearsing. These objections cast all redistributive schemes into a dubious light, the more so the more important whatever is to be redistributed is to us.[70]

Why bother then? I did make a case for fungibility and for what I called injustice to individuals in favor of others in certain situations. I felt, therefore, that I should explore the limits of the case and have tried to do so.

69. Monozygotic twins are more identical than others—but not identical either.

70. However, in my opinion, these objections do not suffice to overwhelm the case for the injustices to individuals discussed earlier.

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Reviews

Second Thoughts on the Vietnam War

WHY WE WERE IN VIETNAM. *By Norman Podhoretz*. (Simon and Schuster, New York, 1982) $13.50.
MANY REASONS WHY. THE AMERICAN INVOLVEMENT IN VIETNAM. *By Michael Charlton and Anthony Moncrieff*. (Hill and Wang, New York,1978) $10.00.
CERTAIN VICTORY. HOW HANOI WON THE WAR. *By Denis Warner*. (Sheed, Andrews, and McMeel, Mission, Kansas, 1978) $9.95.

By the late 1960s the view that American intervention in Vietnam was morally wrong had become the received wisdom amongst American intellectuals and America's opinion-making elites. This situation did not emerge overnight. It developed gradually throughout the period 1965 to 1968, first in the universities and the liberal-left journals of opinion. Eventually it percolated down through the mass media and schools to the general population and became expressed in the Congress in the early 1970s.

The political attitude towards the Vietnam commitment which had become dominant amongst intellectuals and opinion-makers was not mere pragmatic disenchantment with what was perceived to have been an unsuccessful policy. The attitude was far more profoundly moralistic. It involved cliches referring to this "dirty war" in which "we had no right to be involved" or in which "we were on the wrong side."

The transformation of American intellectual attitudes to the war reflected the influence of the New Left upon American liberalism. Although American liberals never accepted the total philosophical outlook of the New Left—with its absolute rejection of all of this country's most basic economic and political institutions—they were influenced by many New Left attitudes to major national issues, particularly its morally impassioned stance on race and Vietnam.

This meant, in the case of Vietnam, acceptance of many of the more fantastic New Left assumptions about the nature of the conflict. America's communist enemies were no longer conceived of as totalitarian power-seekers, but rather as nationalists in search of social justice. And the governments the United States was supporting in Vietnam were viewed as highly repressive, dedicated to the preservation of social and economic privilege, and thus incapable of gaining popular support. This view of the situation in Vietnam was total fantasy. But it is important to note that it was also a slightly watered-down version of the vulgar Leninist world-view of the New Left, but with a bumbling, "cold-war" blinkered America, in the liberal version, replacing the calculating, profit-motivated America of the radical version. Both views held that the enterprise in Vietnam was fundamentally iniquitous.

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By about 1970 this negative view of American involvement had become something more than the "received wisdom" amongst American intellectuals and opinion-makers. It had acquired the status of sanctified dogma. Dissent from it—any attempt to justify the American intervention—was regarded as a sign of bizarre personal eccentricity or moral depravity. By the early 1970s, the left-liberal intellectual subculture that predominated in the universities and the mass media knew only one response to U.S. policy in Vietnam—rage. The minorities who may have felt differently were intimidated into silence. The majority faith tolerated no heresy.

It is to challenge these sacred orthodoxies that Norman Podhoretz has written *Why We Were In Vietnam*. His account includes both analytical history and moral argument. He shares the sentiment expressed by President Reagan in the 1980 presidential campaign that the Vietnam war was a "noble cause." But while defending the objectives of the involvement, Mr. Podhoretz is intelligently critical of the manner by which these objectives were pursued. He advances the following related propositions:

(1) The United States became involved in Vietnam in order to save South Vietnam from communism, thereby continuing the containment policy of all postwar U.S. administrations.
(2) The objectives of U.S. involvement in Vietnam were morally virtuous because:
    (i) The victory of communism in Vietnam was an intrinsically evil outcome, as the communists were exceptionally brutal and repressive, both in absolute terms and by comparison with the American-backed regimes they succeeded.
    (ii) The victory of communism in Vietnam was extrinsically evil because it encouraged the subsequent victory of communism in other countries: Angola, Ethiopia, Mozambique, Afghanistan, and South Yemen.
(3) The U.S. fought the war in a reasonably civilized manner, as in World War II and the Korean War (for example, the proportion of civilian to military deaths was the same as in World War II, and less than in Korea).
(4) The noble objectives of the U.S. involvement were beyond the intellectual and moral capacity of the United States to realize. Thus Mr. Podhoretz concludes:
(5) The U.S. involvement in Vietnam was moral but imprudent; it was a blunder but not a crime.

The immediate purpose of Mr. Podhoretz's book is to extinguish the feelings of guilt which many Americans have about their country's involvement in Vietnam. America, he argues, has nothing to be ashamed of in what it tried to do in Vietnam. The only shame attaches to its failure. Norman Podhoretz is firmly committed to the idealism expressed in John F. Kennedy's inauguration speech:

> Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, to assure the survival and the success of liberty.

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The core of the book deals with the first proposition: why America became involved in Vietnam and persisted in that commitment under three presidents. His book should be read in conjunction with Michael Charlton and Anthony Moncrieff's *Many Reasons Why*, the edited transcript of a BBC radio series on the history of the Vietnam War. The British book is one of the few vital pieces of historical documentation produced on this subject in recent years. It is entirely built around interviews with a variety of surviving participants in the Vietnam decisions during more than three decades. Those interviewed are British, French, American, and Vietnamese policy-makers, advisers, politicians, generals, diplomats, and intellectuals. They include everybody of significance excepting the presidents themselves (whose memoirs Mr. Podhoretz has used). Interviewer Michael Charlton displays an impressive command of the historical literature, and an intellectual sophistication not found among most academics, let alone his fellow journalists. Although the BBC interviewees confirm the main points of Mr. Podhoretz's historical analysis for the period up to 1973, they provide more of the nuance behind the decisions that are necessarily skated over in his more didactic exposition. For example, Mr. Charlton's interview with Kennedy's ambassador to Saigon, Frederick Nolting, highlights the weakness of the State Department's strategic planning on Southeast Asia, which added to the difficulties in resisting the communist insurgency in South Vietnam:

> Ambassador Nolting: The American government, in general, really did not view the whole Indo-China peninsula as one strategic area as it should have done. I think on the contrary they looked at the map drawn in 1954 and decided that these were different countries: Cambodia, Laos, North and South Vietnam; and they planned in terms of relations with different countries.
>
> Mr. Charlton: Whereas the Communists of course saw it as unitary?
>
> Ambassador Nolting: The Communists saw it as a unit—particularly Hanoi —and they were much wiser to do so. This came out particularly when the Laotian treaty was signed in 1962 after a year of negotiations in Geneva; and that left open the access to some of the vital areas of South Vietnam. We in the Embassy in Saigon became increasingly worried about the lack of safeguards under the treaty, and so did the Diem government which was a party to the negotiations in Geneva. So did the Thai government for that matter. As a consequence of the lack of safeguards in the Agreements on Laos signed in 1962, the 40,000 or so North Vietnamese troops in the Eastern provinces of Laos stayed there; and the Ho Chi Minh trail became what some have called 'the Harriman Memorial Highway.'

On the question of the moral value of intervention, it is hard to fault Mr. Podhoretz: a communist victory turned out to be a moral disaster for the Vietnamese people, both in itself and in contrast to its anticommunist predecessors. The regime which today rules the south has carried out thousands of executions and created a gulag of prisons and "re-education camps" to which hundreds of thousands have been consigned. It has deported more than a million people to remote barren regions of exile called New Economic Zones. Finally, in the course of a

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campaign of racial persecution against Vietnam's ethnic Chinese minority, the regime has deported hundreds of thousands of people, many in unseaworthy boats, out of Vietnam. Tens of thousands died in the pogrom. Nothing in Vietnam's history compares to the atrocities of this regime.

In his interview with former Deputy Assistant Secretary of Defense William Bundy, Michael Charlton gets confirmation of Mr. Podhoretz's basic argument:

> Mr. Bundy: The theory of containment was still the dominant way of thinking. We didn't use the term particularly in Asia: curiously it never was used in any government paper I'm aware of; but it was essentially what we were doing. We were seeking to prevent the Chinese version of Communism from expanding in the area of East Asia.

Mr. Podhoretz correctly points out that the collapse of South Vietnam in 1975, which the United States did nothing to prevent, encouraged Soviet intervention through Cuban proxy troops in Angola, Ethiopia, and South Yemen, as well as the coup d'etat in 1978 by the Communist Party in Afghanistan. Later, when the U.S. stood idly by as the Ayatollah Khomeini's terrorists kidnapped and humiliated American diplomats, the Soviets became convinced that there would be no serious American military retaliation if they intervened directly in Afghanistan. Thus, the view of America as a "pitiful, helpless giant" was established by her failure in Vietnam, and continued to influence American policy in the Third World, and in turn, influenced communist perceptions of that policy.[1]

At this point it is worth considering the responses to Mr. Podhoretz's book by some of the "antiwar movement" reviewers whose highly emotional reactions are reminiscent of the moralistic fervor that characterized the antiwar movement in its heyday. The most vitriolic came from Theodore Draper, an anticommunist who was a regular contributor to the anticommunist British journal, *Encounter*; who wrote for Mr. Podhoretz's magazine, *Commentary*, until late 1979, and; whom the latter described as a moderate antiwar critic. Mr. Draper's review in the March 10, 1982, *The New Republic* began by suggesting that *Why We Were In Vietnam*

> may be an awful portent. It could be the signal for a corrosive campaign to reopen the wounds of the war and envenom American political life once again. We may not even be spared an American stab-in-the-back legend of the kind that haunted the German Weimar Republic during the 1920s.

These few lines reveal the reviewer's dogmatic attitude. Mr. Podhoretz's reconsideration of that war is seen as a reopening of "wounds" and "envenoming" political life. It would appear that Mr. Draper has

1. This point has been confirmed to me personally by the testimony of the former U.N. Ambassador of a Soviet client state in the Third World, who defected in 1978. He told me how after Vietnam the Soviets were going around the U.N. telling the Third World nations that the United States was on the decline, and the Soviet Union was on the rise, so it was smarter to align with the ascendant wave.

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accepted the "antiwar movement's" views as sanctified dogma. Linking Mr. Podhoretz, however loosely, with the antidemocratic right in Weimar Germany, whose "stab-in-the-back" theory of World War I helped legitimize the Nazis, is not criticism but a smear.

Nowhere in his review does Mr. Draper try to deal with Mr. Podhoretz's central, historical argument—that the Vietnam commitment was a continuation of the containment policy. Instead, he attempts to dismiss the author's analysis by disputing his interpretation of a very secondary matter, that is, what Senator Fulbright thought he was doing when he supported the Gulf of Tonkin Resolution of 1964. Mr. Podhoretz's case does not stand or fall on this matter, but Mr. Draper's intellectual credibility does when he tries to make it the centerpiece of his rebuttal.

As for his thoughts on the moral nobility of our objectives in Vietnam, the response is depressing. He focuses again on a secondary issue and trots out the tired old argument that the war was a civil war, not a case of foreign aggression by North Vietnam against South Vietnam.

> This strange theory treats North Vietnam as if it were not inhabited by Vietnamese. Vietnam was one country until it was temporarily divided by the Geneva Agreements of 1954—temporarily because they provided for general elections in 1956 to unify the country. South Vietnamese President Ngo Dinh Diem refused to honor that agreement... South and North Vietnam never accepted the division of the country; both pledged themselves to reunify it by all possible means.
>
> How then could a war between South and North Vietnam *not* be a civil war? North Vietnam was not a "foreign country."

If Mr. Draper were to be taken seriously here, he would be consigning international law to the wastebasket. North and South Vietnam were separate countries because they were governed by separate states. They were recognized as such by scores of countries (South Vietnam more than North Vietnam). Some countries, such as France, Sweden, and India, recognized *both* North and South Vietnam as separate countries. States commit international aggression, not peoples. That is why North Vietnam's attack on South Vietnam was as much an instance of aggression as North Korea's attack on South Korea. Would Mr. Draper regard an East German attack on West Germany as a civil war?

As for Diem's refusal to honor the Geneva Agreements regarding the elections to be held in 1956, one wonders why Mr. Draper thinks Diem was honor bound to an agreement he did not sign. Furthermore, he seems not to know that the North Vietnamese who *did* sign the Geneva Agreements, had violated them as early as 1955 by deliberately obstructing the free movement of peoples between communist and noncommunist zones, which the accords specified would be allowed to take place *before* the projected elections.

Surely the most noteworthy shortcoming of Theodore Draper's criticism is his failure to refute either of Mr. Podhoretz's moral arguments: that U.S. involvement in Vietnam was morally correct since the victorious communists were far more brutal and repressive than American-backed regimes and that their victory in Vietnam encouraged communist

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victories elsewhere. In addressing the latter (the so-called domino theory), Mr. Draper asserts:

> He [Podhoretz] makes no effort to explain what the connections between these far flung events were...His theory implies that the Soviet Union would not have gone into Afghanistan for example, if the United States had won the war in Vietnam or, conceivably, was still fighting there... Whatever the pressures on the Soviets were in Afghanistan, it is hard to see how or why they would have changed in the least whatever had happened in Vietnam.

Here Mr. Draper is presenting a variant of the "local circumstances" theory of communist behavior, which argues that the Soviet Union intervenes, or local communists seize power in the Third World, only in countries where local conditions are conducive to success. This is true. But what Mr. Draper and others ignore is that the anticipated reaction of the United States is a vital question in deciding whether conditions are conducive for a violent takeover. The United States demonstrated first, by its abandonment of Vietnam, and later, by its behavior in Angola, that the Soviet Union could intervene militarily in the Third World, albeit indirectly, without fear of an American military response.

But what of his more serious failure even to address Mr. Podhoretz's other argument that the evil consequences of the collapse of South Vietnam are sufficient vindication of American intervention? Given his reputation for both political moderation and sound scholarship, Mr. Draper's dismissal of the issue suggests just how morally bankrupt the antiwar movement's case was then, and remains now.

Mr. Draper seems to have stumbled on to solid ground, however, when he deals with Mr. Podhoretz's claim that winning the war was beyond America's intellectual and moral capacity. If the writer is correct on this point, then it is reasonable to ask, (as his critic has done): why should the U.S. have undertaken a goal it was incapable of realizing? Should not the U.S. have abdicated such an impractical ideal? If Mr. Podhoretz is correct, then defeat was inevitable, and all those lives were needlessly wasted fighting the war. The antiwar movement as a whole does not look so bad in this light, regardless of its motives. Judgments about the morality of a political position depend more upon its consequences than upon the moral intentions of its proponent.

But, I would argue, Mr. Podhoretz has not established the truth of this proposition. He has shown how three American presidents made unwise decisions in their approach to the war:

> If then Kennedy tried to apply containment in Vietnam on the military cheap, and Johnson tried to make it work on the political cheap, Nixon tried to salvage it on the strategic cheap. All three failed. That these were failures of leadership is certain. Kennedy failed in prudential wisdom; Johnson failed in political judgment; Nixon failed in strategic realism.

He also points out that the U.S. Congress and the American people they represented made a morally wrong decision in cutting back aid to South Vietnam and leaving that nation to its fate in 1975.

However it is one thing to say that the U.S. behaved in an immoral way; it is quite another to say it was incapable of acting otherwise. Such a view would depend upon a theory of cultural determinism, which I suspect the author does not subscribe to.

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At the root of Mr. Podhoretz's problem is the fact that he has swallowed the myth, propagated by the so-called antiwar movement, that the war was unwinnable. Indeed what is missing from his book is a satisfactory account of just why South Vietnam collapsed in 1975, and thus why America's just cause was not realized. He is quite equivocal on this key question:

> Imprudent though it might have been to try to save South Vietnam from Communism, it was also an attempt born of noble ideals and impulses. The same cannot be said of what the United States did in abandoning South Vietnam to Communism in 1975. Perhaps nothing would have helped by then. Except for a few military men, almost everyone thinks that South Vietnam was defeated by its own internal weaknesses as most dramatically manifested in the ignominious collapse of its army in the face of the North Vietnamese invasion. "Our" Vietnamese had always seemed less motivated, less willing to fight than the Communists, and now after years and years of military training and billions and billions of dollars of military aid, after elections and rural pacification and land-reform programs, the South Vietnamese army was unable to stand and defend the country in the last life-and-death battle it would be called upon to fight. Nevertheless we will never know whether the outcome might have been different if the South Vietnamese had not been forced to fight "a poor man's war" and if their morale had not been so disastrously affected by the sense of abandonment and the defeatism this naturally aroused.

Of course we will never know for certain whether the outcome might have been different if the United States had kept its promises to the people of South Vietnam. But we can make an educated guess. The kind of information relevant to such an educated guess is to be found in Denis Warner's *Certain Victory*. An Australian with twenty-five years of experience in Vietnam, Mr. Warner was one of the few well informed and objective reporters of this conflict. His impeccable sources—Vietnamese, American, and Australian—make his somewhat disorganized and badly edited book a mine of factual information.

Summarizing South Vietnam's golden age, Mr. Warner describes the years between 1968 and 1972:

> The years following the Tet Offensive were good ones for South Vietnam. If the Republic of Vietnam ever had a golden age, this was it. The elections of 1967 were not without their flaws, but they did restore constitutional government, and they brought an end to the insane series of coups d'etat that had plagued the country since 1963. In their determination to disengage, the Americans were only too willing to devote attention now to the long-neglected ARVN [Army of the Republic of Vietnam]. There was still a lack of uniformity about the ARVN divisions, but the best, notably the 1st, had performed as well as any American division in the Tet Offensive.
>
> For the first and only time there was a spirit of relative optimism. The indigenous Southern Communists, pushed into the forefront of the Tet Offensive for ideological reasons, had been shattered. Hanoi lost forty percent of its political and propaganda cadres in the South during Tet, and with them any chance of continuing the sort of quasi-military quasi-political war that the ideology required.
>
> The much abused Phoenix programme, which targeted on the Communist infrastructure, prevented it from recovering its lost ground. From 1968

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to May 1971, Phoenix claimed a total of nearly 70,000 members of the communist infrastructure, of whom about 20,000 were killed, about 18,000 surrendered and the rest were captured. Although it had to abandon its ideology in the process, Hanoi was forced to rely now on conventional war, and its purely guerrilla activities, which had made life so uncomfortable in so many parts of the countryside for so long, tapered off, bringing to a virtual end the purely 'civil' component of the war. It became a pleasure to go out into the countryside and to see the peasants at work with new tractors and rotary hoes. The road from Saigon to the seaside town of Vung Tau was crowded every weekend with holidaymakers.

When Hanoi undertook its massive conventional attack in 1972, the South Vietnamese units in Quang Tri, lacking air support, gave way briefly. Once reinforced, they held the line eighteen miles south. At the two other main points of North Vietnamese thrust—Kontum and An Loc—the ARVN stood firm and fought courageously.

It was the first major test of ARVN forces fighting without large-scale American forces in support on the ground. The Northern forces made many blunders and found difficulty in coordinating armor, artillery and infantry, but the South, despite some glaring errors, established that with sufficient continuing air support from the United States they had at least a chance of surviving anything the North could throw against them.

Then came the Paris Peace Agreements of January 1973. Eager to relegate Vietnam to a sideshow in the great Soviet-American detente, Dr. Kissinger and President Nixon withdrew all American forces from Vietnam while allowing the North Vietnamese to leave their battle corps in the South. The administration was confident that South Vietnam could survive since the agreement allowed the U.S. to replace equipment damaged or lost on a one-to-one basis and to furnish all necessary fuel and ammunition supplies, plus economic aid. Furthermore President Nixon promised Mr. Thieu, in a January 5, 1973 letter, that the United States would come to South Vietnam's aid "with full force" if Hanoi violated the agreement. Watergate, and a vindictive Congress, were to render these promises meaningless.

So the withdrawal of United States forces from Vietnam was not in itself fatal for the noncommunist cause. In spite of violations by both sides, in the first year of the "peace" the South Vietnamese government retained strong authority over the overwhelming majority of the population. The promise of continuing American aid made South Vietnam appear militarily secure. Mr. Warner tells us:

This was the view of the Hungarian and Polish members of the International Commission for Control and Supervision set up under the Paris Agreement with the impossible, and never seriously attempted task of keeping the antagonists apart. In anticipation of continuing American military aid for South Vietnam, they made no secret that they thought the North would be wise to abandon its attempts to win by force of arms and to work for a political solution based on the Paris Agreement. This was the advice they continued to offer Hanoi long after the old guard revolutionaries there had decided to revert to all out war.

It was the changing attitude of Congress which transformed the situation entirely. Congress refused to support the administration's request

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for the aid that South Vietnam needed, and was entitled to under the Paris Agreement. What better witness to the real significance of this change than the communist general, Van Tien Dung, who led the North Vietnamese army to victory in 1975, and who commented:

> The decrease in American aid had made it impossible for Saigon troops to carry out their combat and force development plans. In the 1972-1973 fiscal year the Americans had given their proteges $1,614 million in military aid. In fiscal year 1973-1974 it was only $1,206 million, and in fiscal year 1974-1975 it fell to $700 million. Nguyen Van Thieu had to call on his troops to switch to a "poor man's war": according to their own documents, fire support fell nearly 60 percent because of the shortage of bombs and shells; mobility also decreased 50 percent because of a shortage of aircraft, vehicles, and even fuel.[2]

And, as Mr. Warner adds:

> Morale in South Vietnam had also eroded almost beyond the point of no recall as troops found themselves short of ammunition, spare parts, or the gasoline to move all the vehicles they had inherited from the road-bound American military system.

Without sufficient resources to defend the entire country, President Thieu belatedly ordered a retreat from the Central Highlands after the important provincial capital of Ban Me Thuot was overrun by the North Vietnamese in early March 1975. Retreat is an incredibly difficult military maneuver even when properly planned and executed. But neither President Thieu nor his second Corps regional commander, Pham Van Phu, properly planned anything. The civilian population was not informed of the decision, and at the sight of the departing troops, joined them in panic. The flood of civilians and the lack of effective rearguard forces made an orderly military retreat impossible. The communist armies raced in to cut off the retreat, massacring thousands and increasing the chaos of what came to be called the "convoy of misery." This story was repeated throughout central Vietnam as the northern half of the country fell like a pack of cards.

The rout was halted just north of Saigon where the Eighteenth Division put up a magnificent resistance for more than a week against three North Vietnamese divisions until it was eventually overwhelmed. There, and in the Mekong Delta, the South Vietnamese army did not collapse. This proves the point that it was the unorganized retreat which was the immediate cause of the collapse of the South Vietnamese army, not the lack of "will to fight," which was the slanderous cliche of those Americans who needed an alibi for their betrayal. Of course, President Thieu bears some responsibility for the debacle, as do some of his generals. But we must remember that he was found wanting in a crisis created by the treachery of the U.S. Congress.

Why did the U.S. Congress decide to renege on the nation's commitment to Vietnam? As stated earlier, liberalism of the late 1960s variety began to gain a foothold in Congress in the early 1970s. It was espoused

2. General Van Tien Dung, *Our Great Spring Victory. An Account of the Liberation of South Vietnam* (New York: Monthly Review Press, 1977), pp. 17-18.

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by Senators McGovern, Church, and Clark, who were joined by younger men such as Senators Dodd and Tsongas and Representatives Studds and Moffett, to name just a few. These "New Politics" liberals had accepted many of the more fantastic assumptions of the New Left concerning the nature of the war. Persuaded by a major disinformation campaign initiated by Hanoi in 1973, they believed in the alleged repressiveness and unpopularity of the government of South Vietnam.[3] Added to this was a notion that the "ethics of clean hands" should replace the "ethics of consequences" as the basis of U.S. political decisions. The ethos of the sixties had triumphed.

Thus, what began as a noble cause ended in national disgrace. Congress' decision to abandon South Vietnam (and Cambodia) to totalitarianism was an act of contempt for the 55,000 young Americans who sacrificed their lives. It was also an act of contempt for more than 300,000 brave, young South Vietnamese soldiers, not to mention the tens of thousands of Cambodians, Koreans, Thais, Australians, and New Zealanders who also made the supreme sacrifice in defense of a noble cause. America was quite capable of fulfilling President John F. Kennedy's promise, that it would pay any price, bear any burden, to protect another people from tyranny. By *choosing* not to keep that often repeated promise, the U.S. Congress stained the nation's honor.

Stephen J. Morris

Poor Little Rich Boy

THE IMPERIAL ROCKEFELLER: A BIOGRAPHY OF NELSON A. ROCKEFELLER. *By Joseph Persico*. (Simon & Schuster, New York, 1982) $16.50.

The salient question about Nelson Rockefeller is why he never became president. That job was his life's ambition: he yearned to be president, assumed that he would be, and strove throughout his life to achieve that goal. He possessed great advantages in this quest. He was a member of a family with incredible wealth and unequaled contacts. He could hire the ablest, brightest assistants. He was intelligent, energetic, with broad practical experience in national and international

3. For example when the Senate and House Foreign Affairs committees held hearings in 1973 and 1974 on the situation in South Vietnam, they only called upon people like Bella Abzug, Don Luce, Gareth Porter, and Fred Branfman to testify. The committee members either did not know, or more likely did not care, that these "expert witnesses" were in fact fanatical supporters of Hanoi. Mr. Branfman, co-director of the Indochina Resource Center, was the brother-in-law of a convicted Viet Cong terrorist named Nguyen Huu Thai, whose murder victims included American soldiers in Saigon. It was not surprising that he and his fellow witnesses gave testimony to the Congress which was a colossal series of falsehoods about the repressiveness of the Thieu regime, designed to aid Hanoi's victory.

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politics. Yet Nelson Rockefeller never came close even to winning his party's nomination, the penultimate step to the presidency.

Rockefeller's lack of appeal to Republicans can be explained in part by resentment against his inherited wealth and presumed patrician heritage, his unparalleled Eastern establishment credentials, and his liberalism on domestic issues. All of these factors are handicaps in the Republican Party, although not in the Democratic Party nor in the country as a whole. Franklin Roosevelt sprang from an older and more distinguished line than Rockefeller. This presented few problems for F.D.R. and aroused resentment principally from his own class, who believed he had betrayed them. The wealth and liberalism of the Kennedys proved strong advantages in their political careers.

But Nelson Rockefeller was a Republican, and the Republican Party is controlled by the middle class. Professionals, corporate executives, entrepreneurs, small businessmen, and their spouses are the heart of the Republican Party. Such people are not particularly comfortable with those of aristocratic lineage and inherited wealth and rather resent both. Patricians do not exemplify the Republican model of virtue, success achieved through individual effort. Thus such politicians as Henry Cabot Lodge, Jr., John Lindsay, and Nelson Rockefeller have found it difficult to attract a broad national following in their party. Only Theodore Roosevelt successfully overcame this disadvantage. He did so by transforming himself from a rather sickly upper-class child into a Badlands cowboy and the hero of San Juan Hill and by the good fortune of being vice president when McKinley died.

The Democratic Party, on the other hand, welcomes scions of wealthy families. The party of the poor admires money when it is accompanied by grace and style. Inherited wealth in a Democrat is romantic, glamorous: such a politician is one of the people, yet above them. He is presumed to be disinterested; to care about the common man's problems, even though he has never experienced them; to recommend policies because he thinks them best, not because they will make him or his friends rich. That the child of a wealthy family is willing to cast his lot with the party of the disadvantaged suggests admirable unselfishness. Thus Robert Kennedy could win a fanatic following by casting himself in 1968, according to Arthur Schlesinger, Jr., as "tribune of the underclass," the would-be president of "all who are not represented." As Rockefeller once stated, if he had been a Democrat, the road to the presidency would have been far easier.

Rockefeller was encumbered by other serious disadvantages in presidential politics. His personality, according to Mr. Persico, made it very difficult for people to like him. He was cold and impersonal. He did not much care for others and was too proud to act as if he did. He paid a price for this attitude: "Pride goeth before destruction and a haughty spirit before a fall."

Rockefeller was indifferent towards people in general and the many talented men who toiled for him in particular. This is somewhat unusual, for the challenges an important politician and his stafff must overcome together tend to create mutual affection and personal loyalty. However, Rockefeller took others' sacrifices on his behalf for granted:

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"The king cannot help, if footsore soldiers must march through the night—the kingdom must be saved. He saw his life in that crusading light and assumed that his subordinates shared his outlook."

Mr. Persico writes that Rockefeller's treatment of his staff inspired the Kleenex Theory: "A Kleenex tissue is a useful item with a definite, if limited function; it is not however, a possession that is cherished much beyond its immediate value." Such treatment could not evoke much love in his subordinates. Thus they were motivated largely by self-interest not the foundation of a very lasting commitment. Unless an employee's contributions are properly appreciated and rewarded, an able aide will unhesitatingly move along when a better opportunity arises.

Some indifference to one's lieutenants is unavoidable in the career of a man with great ambition and demanding duties. The need to accomplish the objective at hand at times must overwhelm all other considerations. But Rockefeller's remoteness indicated a coolness of temperament that constituted a great barrier to the presidency. A man who is indifferent to others and cannot conceal his indifference will have difficulty gaining the affection and support of the party stalwarts who do the work that wins delegates and primaries.

Rockefeller's remoteness may be explained in part by a fear common among those possessing great wealth, beauty or power, the apprehension that they are not loved for themselves, but flattered for the advantages they can confer. Suspicion of others' motives makes difficult the intimacy which is the basis of friendship. Moreover, Rockefeller was never forced to develop the talent of winning friends nor making himself pleasing to others because his wealth ensured that he would always be surrounded by those eager to please—no matter how he behaved. An indisposition to please others was reinforced by the belief that he had earned the right to lead, that merit entitled him to the highest office. Like Coriolanus, he refused to stoop to win. Henry Kissinger explains this behavior as Rockefeller's unwillingness to appear to be seeking anything for his own advantage because he had been blessed with so many privileges.

Whether a man attains the presidency is not determined solely by his own virtues but also by luck and the quality of his opponents. Rockefeller had the misfortune to compete against the shrewd and tenacious Richard Nixon. Mr. Nixon labored tirelessly in the party vineyards from his vice presidential nomination in 1952 until 1968, when he was nominated for the presidency the second time. He knew what was necessary to win, and he did it. Rockefeller and his staff viewed him with condescension and could not believe that he could defeat them. Yet "the opportunist" easily outmaneuvered Rockefeller whenever they competed.

Mr. Nixon viewed Rockefeller with the bemused disdain of the professional for the amateur. Their contrasting approach to politics was encapsuled in an episode during the 1968 campaign. After candidate Nixon had overwhelmed all opposition in the primaries and amassed a commanding lead in delegates, Rockefeller proposed a "battle of the polls" in which he and Mr. Nixon would debate and then commission a nationwide poll, whose results would be distributed to the convention and presumably influence its choice. Mr. Nixon correctly described the

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proposal as ludicrous: it was launched at the last minute, and he could not be compelled to accept it.

Rockefeller was perceived as a liberal in a party that was moving to the right. This factor and his divorce explain his defeat for the Republican nomination in 1964, the only year in which Mr. Nixon was not a competitor. His bitter fight with Barry Goldwater forever alienated that faction of his party that was to be dominant thereafter.

Rockefeller's last years were filled with frustration. He resigned the governorship in 1973 to devote himself to one of his many study panels, the "Commission on Critical Choices for Americans," a vehicle to promote himself and remain in the public eye while preparing to run for the presidency in 1976. Mr. Nixon's resignation and the accession of Gerald Ford disrupted this plan and made him willing to accept the vice presidency, an office he considered far beneath his talents but nevertheless his last, slim hope for the presidency. Like all of his predecessors, he proved unable to make as much of the job as he had hoped. Gerald Ford found it impossible to run with him on the ticket in 1976; this was the end of all his hopes for the presidency. The conservatives, whom he had alienated in 1964, were dominant, and he lacked any base.

Despite Rockefeller's inability to become president, he was a failure only according to his own impossibly high standards. He was four times elected governor of New York, and he led that state with an iron hand throughout his tenure. He bested many able men with whom he clashed, including media darling John Lindsay and the formidable Robert Moses. The decline of the Republican Party in New York since his departure is eloquent testimony to Rockefeller's leadership, now absent. For almost any other man, his many accomplishments would have been enough.

Mr. Persico has a talent for identifying interesting, revealing anecdotes, of which there are many in this book. He writes clearly, simply, and vividly. It is easy to believe that in Mr. Persico, Rockefeller lived up to his reputation of hiring the ablest assistants. The author appears to be candid about his former employer but neither salacious nor gossipy. The pathos and mystery surrounding Rockefeller's death are described straightforwardly and fairly. The author has resisted the temptation to sell his book by melodramatizing Rockefeller's personal life or overemphasizing the significance of such events in a career filled with great events and accomplishments. This book is not in fact a biography of Nelson Rockefeller, but the author's recollections of his former boss. Rockefeller's career remains unchronicled and the wellsprings of his character unexplained.

W. Scott Burke

Religion and the Fall of Capitalism

THE SPIRIT OF DEMOCRATIC CAPITALISM. *By Michael Novak.* (American Enterprise Institute/Simon & Schuster, New York, 1982).

Theologians have never found it very easy to come to terms with capitalism. The warning that a camel may find it easier to pass through the

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eye of a needle than for a rich man to enter the kingdom of God has raised doubts over the legitimacy of economic life. The fact that a market economy makes a virtue of competition, inequality, and the profit motive, which have traditionally been interpreted as vices, has made theologians even more skeptical of the business of creating wealth. But when, in addition, the socio-economic system built around this whole process has overtones of a secular ideology, the reflective Christian has frequently found himself estranged from capitalism. The result has been that most theological reflection on capitalism since the mid-nineteenth century, whether Protestant or Catholic, has ranged on a spectrum from critical to hostile. The ideal of socialism has proved far more attractive than the practice of capitalism.

This book marks a break within that tradition. It explores the ideals and practice of democratic capitalism from an explicitly theological point of view; and it is sympathetic. Michael Novak writes that his book is about "the life of the spirit which makes democratic capitalism possible...its theological presuppositions, values and systemic intentions." His conclusion is that the ethos of democratic capitalism is fully consonant with the Judeo-Christian tradition and that in practice its performance is far superior to that of socialism. It is a most impressive piece of writing, combining as it does a firm grasp of philosophy, theology, and political economy. It is without question a major landmark in this area and will doubtless become a point of departure for future work.

The subject of the book is democratic capitalism, defined as the convergence of three different systems: a predominantly market economy, a democratic polity, and a moral-cultural system concerned with justice. The derivation of the expression "democratic capitalism" is interesting because it places the book in perspective. The expression comes from two sources: from Reinhold Niebuhr's description of the American system, which he had grown to respect and admire as a " 'capitalist-democratic' culture" (even though earlier in his life he had been an ardent socialist and a staunch critic of capitalism); and from Jacques Maritain's search for a way of labelling the American experience as something beyond capitalism. Maritain himself chose "economic humanism," though the source from which it was chosen included among others the terms "the new capitalism," "economic democracy," "mutualism," "productivism," and "democratic capitalism."

The reason the expression is significant is because it is at once greater than the market economy or competitive capitalism which Milton Friedman has chosen to champion and different from the free society about which Friedrich Hayek has written so extensively. It is also more comprehensive than the spirit of capitalism, which interested Weber because it deals not just with the relationship between cultural values and economic life but with the relationship of both to a political system of democracy. As a result, it places the book not primarily in the tradition of either Smith, Hayek, and Friedman or of the debate started by Weber, but of the writings of Niebuhr and Maritain. Like them Mr. Novak is a believer, like them his point of departure is theology rather than political economy or economic science, and like them his intellectual pilgrimage has been a steady march away from socialism to the

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recognition that the American system has great practical wisdom and deep moral foundations.

The book is divided into three main sections. The first part concerns the ideals of democratic capitalism and is an attempt to uncover the moral structures on which it depends. The most distinguishing feature of democratic capitalism, especially by contrast with traditional and socialist societies, is pluralism; a society of free persons needs institutions that allow the expression of differences and permit the competition of ideas. Next there is the concept of the world in terms of uncertainty and uninterested consequence; after that a recognition of sin as grounded in human personality and, therefore, of utopia as beyond this mark of any system; then an image of God as "the practical provident intelligence embodied in singular agents in concrete situations" rather than the omniscient and omnipotent Nous of socialism. Finally there is the idea of community. This covers the fundamental elements of world development, the corporation, interdependence, and the ethos of cooperation that makes possible various forms of community as well as shapes a certain kind of human being who is neither an individualist nor a collectivist but a "communitarian individual." Crucial to the development of the individual and indispensable to the continuation of democratic capitalism is the family. The whole of this section of this work is admirably constructed and derives its force from the combination of theological and philosophical insights with contemporary research on the family, the corporation, and Third World poverty.

The next part examines what is left of socialism as a way of sharpening the focus on democratic capitalism. It is based on the premise that socialism is dead. In this context the many quotes from Kolakowski, who himself remains staunchly anti-capitalist, are devastating. Although the thesis is already well established, it is nevertheless well presented here: Marxism, a doctrine that is morally bankrupt; the communist world, which displays coherence only on the basis of force; and at the heart of it all, a set of ideals that are fundamentally twisted. The argument is well illustrated by an empirical examination of three important contemporary issues—income distribution, the rise of blacks in the U.S., and the role of multi-national corporations.

The final section attempts to lay the foundations for a theology of economics. After documenting and analyzing the Catholic anti-capitalist tradition and examining contemporary Christian socialism through the writings of its foremost European expositor, Professor Juergen Moltmann of Tubingen, Mr. Novak goes on to examine liberation theology in the context of the Latin American debate over dependence. Finally after looking at the path taken by Reinhold Niebuhr in moving from Marxism to democratic capitalism, Mr. Novak attempts to develop a theology of economics by laying down six theological principles fundamental to democratic capitalism: the Trinity, the Incarnation, competition, Original Sin, the separation of realms, and sacrificial love.

The book is a major contribution to the moral defense of capitalism and an important step in developing a theology of economic life. I find myself in substantial agreement with a great deal of what is said in it. Nevertheless its most distinctive feature—the assessment of capitalism from a theological viewpoint—provides answers to many questions but

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also raises others. As a piece of theological reflection, by far the most important of these is the extent to which the ideals of democratic capitalism unveiled in the first part of the book are the genuine ideals of the Judeo-Christian revelation or the ideals of the Enlightenment as derived from the writings of Franklin and Jefferson.

Fundamental to democratic capitalism is the ideal of pluralism, and it is the development of this ideal more than anything else that gives rise to problems. Pluralism to Mr. Novak is incompatible with a traditional vision of social order. As a result, Solzhenitsyn's criticism of democratic capitalism as having as its heart a moral poverty is dismissed by him as "a traditional vision of society. This vision is explicitly religious, perhaps even theocratic. The Orthodox society he envisages would discipline liberty and would shape human beings by this vision." Mr. Novak goes on to say that "Many regard the emptiness of the heart of pluralism as a flaw...But, this is to attempt to judge pluralism by a standard appropriate to a traditional sense of order. The 'new order of the ages' was intended to be quite different." After taking up Peter Berger's concept of the sacred canopy which all cultures erect, Mr. Novak goes on to say "In a genuinely pluralistic society, there is no one sacred canopy. By *intention* there is not [italics original]. At its spiritual core, there is an empty shrine. That shrine is left empty in the knowledge that no one world, image or symbol is worthy of what all seek there. Its emptiness therefore represents the transcendence which is approached by free conscience from a virtually infinite number of directions." The consequence of this view is that "a rather harsh thesis is forced on those who would like to 'Christianize' a pluralist society, 'bring Christ to the marketplace,' and 'suffuse the system with Christian values.' Such expressions derive from a traditional conception of social order. They project a unity of moral vision which, under pluralism, is inappropriate." The implication is that "Christian symbols ought not to be placed in the center of a pluralistic society. They must not be, out of reverence for the transcendent which others approach in other ways."

This concept of pluralism fits uneasily into a traditional or Biblical concept of society. The insights shown by the prophets in relating the well-being of a society to its spiritual core cannot be dismissed simply because the prophetic ideal was theocratic. Similarly the metaphor of salt and light, developed in the gospels as the mode of Christian social involvement, is hardly compatible with the spiritual emptiness which is by intention at the heart of pluralism. The authentic Christian approach has always been to argue that the shrine at the heart of society can never be empty and that, to the extent that it is filled by ideals other than those derived from a Judeo-Christian view, the life of the society will suffer. The ideal which Michael Novak makes the central feature of democratic capitalism therefore is alien to a Christian world view. I find it interesting that he starts with the ideals of capitalism and concludes with some theological doctrines relevant to democratic capitalism. But from where do the ideals come if not the theological principles? It is highly dangerous to arrive at the ideals by a process of induction based on the American experience as this begs the question raised by Solzhenitsyn.

It may be that this is unfair to Mr. Novak and that his ideal of plural-

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ism is nothing more than a Reformation plea for respect for the individual conscience under God against the absolutism and tyranny of a monolithic church. If it is, it remains veiled. As a consequence the conclusion one is forced to draw is that the ideal of pluralism, which is vital to democratic capitalism, is essentially an Enlightenment ideal. From the point of view of theological reflection on the spirit of democratic capitalism, this is of vital importance for what is unveiled as consonant with Judeo-Christian insights turns out to be more compatible with a secular creed.

The issue, however, is not just theological: it has important practical implications. Consider the following two quotations. "Outsiders like Solzhenitsyn are often shocked by such a nation's public immoralities: massage parlors, pornography shops, pickpockets, winos, prostitutes, pushers, punk rock, chambers for group sex—you name it—democratic capitalism tolerates it, and someone makes a living from it." And: "On the question of abortion... no one is likely ever to be satisfied with the law, but all might be well advised not to demand in law all that their own conscience demands." The shrugging of the shoulders and the libertarian bias in these statements falls far short of either a Catholic or distinctively Biblical emphasis on moral standards in society. Indeed, metaphors of salt and light lose their force if morality is limited to the purely private realm.

A related issue raised by the book is the author's theological method. He takes the words of Scripture seriously yet acknowledges that the problems facing writers of the Biblical era were not the problems of political economy we face today. The universal power posed by the words of Scripture derives from the fact that they are unrelated to any particular system. He steers well away from arguing that democratic capitalism is the system of which Christianity is the religion. In reaching this conclusion he has some strong things to say about the current revival of Christian life in America and its emphasis on Scripture as it relates to theological methods.

> There is a great gap between the Word of God and systems of economics, political, social, and cultural thought in modern societies. The human mind requires a powerful set of philosophical and theological concepts in order to relate the pure and simple Word of Scripture and the complex body of modern thought. By trying to take a shortcut around systematic philosophical and theological reflection, and by ignoring intellectual and social history, too many contemporary clergymen, theologians, and devout laypersons have ensnared themselves in pious simplicities which falsify reality. Quoting Scripture, they do not manage to relate the Word of God *incarnationally* to every fiber of modern civilization. They fail to understand that Scripture applied to the real world without exact intellectual analysis echoes emptily. Those who would apply Scripture to public policy cannot take shortcuts.

Much of what is said in this passage is absolutely correct and needs saying. In thinking about social problems, it is important that Christians do not take shortcuts, do not ignore either history or contemporary research, and use a sound hermeneutical method. But there still remains the very real problem of authority. It is all too easy to accom-

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modate the word of Scripture to the complex body of modern thought, allowing the latter an autonomy which shapes interpretation of the former even though it may contain assumptions which are totally at variance with it. For example, in the context of the intellectual defense of capitalism, insuperable problems soon arise for the Christian if this initial assumption is the Deism of Adam Smith or the Social Darwinism of Herbert Spencer. This is far from being an easy problem to solve. But I believe the way forward for theological reflection in this area is first to trace in far more detail than has been done hitherto the consequences of secularism in conventional economic thought so that it then becomes possible to reconstruct the defense of the market within the bounds of Christian justice.

The final chapter of this book is outstanding. It contains six theological doctrines which have been instrumental in the development of the institution of democratic capitalism: the emphasis on the Trinity as the basis for strong mediating structures, the Incarnation as a doctrine of hope but not utopia, a belief in Original Sin as needing check and balances, the separation of realms as a warning against ecclesiastical tyranny and a beautifully written concluding section on *caritas* as infusing the whole of political economy. All make the book compulsory reading for anyone interested in the moral dimension of the society in which we live.

Brian Griffiths

Short Shrift

Thomas Kessner and Carol Boyd Caroli
Today's Immigrants, Their Story: A New Look at the Newest Americans (Oxford University Press).

Immigration is a sometimes painful and always complex social and political issue. Moral dilemmas are posed by the plight of refugees, for the grim reality is that the United States cannot absorb everyone in the world who wants to come here, without jeopardizing the very prosperity, stability, and freedom that attracts them. But the inspiring words on the Statue of Liberty haunt every attempt to limit immigration, however imperative such limitations may be.

Any book that offers guidance through the maze of complexities surrounding immigration is welcome. *Today's Immigrants* seems to promise enlightenment, but it delivers a peculiar mixture of journalism and scholarship, with Jekyll-and-Hyde transitions that are disconcerting at best.

One paragraph reads like a conventional scholarly history with statistics and dates. The next paragraph begins a personal narrative of one refugee, rambling on for pages. The book is sometimes interesting, sometimes informative, but you never know what to expect next. It reads like a cut-and-paste job, rather than something that was thought out in advance and given some kind of structure.

Taking the book for what it is—a hodge-podge—one can find some worthwhile points scattered here and there. The horrors in-

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flicted on the Vietnamese "boat people" are brought out, along with the fact that most of them were ethnic Chinese, a much-hated minority in southeast Asia. It is also repeatedly noted that differences within the Italian, the Russian, or the Asian community in the United States keep each group internally fragmented, as well as separated from the larger society. For example: "People from Moscow, Leningrad, and Odessa do not mix in the States." Today's Italian immigrants have few—and often hostile—contacts with Italian Americans. Even among anti-Communist Vietnamese refugees, those who are not ethnically Chinese resent the Chinese and have little or no compassion for the boat people.

A serious study might have brought these scattered points together, perhaps in a summary chapter, and explored their implications. But there is no summary chapter, no overall patterns shown, no historical conclusions, and no policy implications. In short, there is no book. There is, instead, a television-style documentary on the printed page.

Each medium has its own advantages and disadvantages—a simple but important fact apparently overlooked by the authors of *Today's Immigrants.* There can be a good television documentary, just as there is good print journalism and good scholarly history. But to write a book in the hop-skip-and-jump style of a television documentary is to take on the disadvantages of television without the corresponding advantage of visual immediacy. To single out a handful of individuals in order to tell the story of immigration may be forgivable within the time constraints and other restrictions of the visual media. But to do this in a book with sweeping throwaway lines about immigration policy is simply irresponsible self-indulgence.

A typical on-the-run remark dismisses attempts to control immigration from Mexico: "One legislative act could hardly cancel aspiration developed over decades." Despite this lofty, foregone conclusion style, many legislative acts have in fact cancelled many long-standing aspirations. Declarations of war, for example, have cancelled many individuals' aspirations for life itself. There is no inherent, iron law preventing control of the border with Mexico. There are political reasons why it is not done, as there are political reasons why other things are not done. A *serious* study might have gone into those reasons.

The central problem of immigration policy—or any policy—is that individual aspirations may or may not be compatible with the social good, or even social survival. Immigrants have made great contributions to many countries, including the United States. But they have also created serious problems that cannot be brushed aside as the fantasies of bigots. Moreover, these problems have been much more enduring in some groups than in others, so that attempts at controlling the mix are not simply "deep and painful flaws in the fabric of American justice." The wisdom or consistency of American immigration policy is open to many questions that can be debated among Americans. But there is no inherent moral or legal right to immigrate to the United States, so no *injustice* has been done, whether our policies are wise or foolish.

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The trade-offs of many conflicting aspirations and interests are at the heart of immigration policy. But instead of confronting the central reality of this trade-off, *Today's Immigrants* presents the experiences of a very few people in their own highly subjective interpretations, and often in gossip-column detail. It is as if the complex issues of international trade were addessed by publishing long interviews with officials of the Chrysler Corporation.

The blurb says that this "is the first book to deal with the new realities of immigration" by deftly "interweaving" oral history and immigration policy analysis. If truth-in-packaging laws applied to books, this one would be a candidate for prosecution. It is neither good history nor good journalism nor good policy analysis. By trying to be everything at once in a small book, it has succeeded in being neither fish nor flesh.

Thomas Sowell

Petr Beckmann
Access to Energy (Box 2298, Boulder, Colorado)

Concern over the environment and health hazards is the most troubling aspect of modern technology generally, and nuclear technology specifically. No one has shown more scrupulous attention to this matter than Dr. Petr Beckmann. In his monthly newsletter, *Access to Energy*, he has reported that in the thirty-two years of the Atomic Energy Commission's operations, 104 people have been killed by an unforeseen hazard. That hazard was gravity—which resulted in falls and falling objects.

An emerging alternative form of energy is solar power, which Dr. Beckmann understandably describes as "gentle and lovable." In one issue, he joins the fanfare over Southern California Edison's plans for the world's largest solar plant to produce commercial electricity. The good news is that solar power works. The bad news is that we "are looking at a power plant that produces 1% of the power of a standard nuclear or coal-fired unit on five times the area for one sixth of the time." This is, "in polite English, called uneconomical." In the "Potomacese" of former Secretary of Energy Edwards, it is "potentially economically feasible." In real life, the Potomacese word "potentially" is a nice way to construct the negative.

Author of *Health Hazards of Not Going Nuclear*, among many other titles, Professor Beckmann each month produces a rich mine of information on developments in energy and technology. And, in a lively readable style, he offers some correctives to the "kindergarten economics" and "medieval" thinking of such "consumer advocates" as Ralph Nader, Barry Commoner, and Amory Lovins—names that have become designer labels of lovable and gentle environmental policies.

Under the heading, "Defending the Environment against the Sierra Club," Dr. Beckmann notes the fundamental misconception shared by "duped nature lovers with witless industry executives"—that saving the environment is a simple matter of a "balance" between industry and nature. "First, it is energy and technology that enables

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man to live in civilization, yet in harmony with nature; and it is, to the contrary, the lack of industry and multiple land use that has inflicted grievous damage on the environment in backward countries . . . Second, the air and water have not become cleaner *thanks* to the Sierra Club, but in spite of it. . . . They have perverted the Clean Air Act into a tool of social engineering: Scrubbers, costing the rate payer 20% of the $1 billion for a new power plant, are not mandated for clean air, but as a universal hairshirt for utilities—western coal generates less pollution going into them than eastern coal generates coming out."

Lurking beneath all this, might there not be a darker side to good intentions? Is there not something odd about well-off suburbanites, with Perrier in hand, prescribing windmills, treadmills, and wheelbarrows for the sweaty masses out there? It might be very well to ban recreational vehicles in favor of horses in National Parks. "The horses do more damage, but they are not ridden by the riff-raff."

This fact-filled and witty newsletter is an indispensable tool for recasting "the iron laws of the fashionable." It is available from the above address for $22 ("or $1 in pre-1965 US silver coins") for twelve monthly issues (overseas, $30).

R.B.

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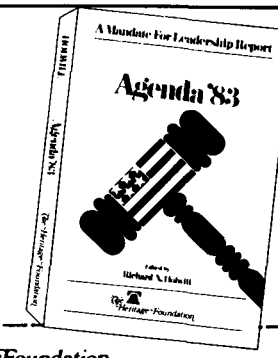

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